# DOCKET

No. 08-538
Title: William G. Schwab, Petitioner
v.
Nadejda Reilly
Docketed: October 23, 2008
Lower Ct: United States Court of Appeals for the Third Circuit
Case Nos.: (06-4290)
Decision Date: July 21, 2008
Questions Presented

| Date | Proceedings and Orders |
|---|---|
| Oct 20 2008 | Petition for a writ of certiorari filed. (Response due November 24, 2008) |
| Nov 24 2008 | Brief amicus curiae of National Association of Brankruptcy Trustees filed. |
| Dec 10 2008 | DISTRIBUTED for Conference of January 9, 2009. |
| Dec 18 2008 | Response Requested . (Due January 21, 2009) |
| Jan 13 2009 | Order extending time to file response to petition to and including February 20, 2009. |
| Jan 28 2009 | Order further extending time to file response to petition to and including March 23, 2009. |
| Mar 23 2009 | Brief of respondent Nadejda Reilly in opposition filed. |
| Apr 7 2009 | Reply of petitioner William G. Schwab filed. |
| Apr 8 2009 | DISTRIBUTED for Conference of April 24, 2009. |
| Apr 27 2009 | Petition GRANTED limited to Questions 1 and 2 presented by the petition. |
| May 20 2009 | The time within which to file the joint appendix and petitioner's brief on the merits is extended to and including July 10, 2009. |
| May 20 2009 | The time within which to file respondent's brief on the merits is extended to and including September 18, 2009. |
| Jul 10 2009 | Joint appendix filed. |
| Jul 10 2009 | Brief of petitioner William G. Schwab filed. |
| Jul 17 2009 | Brief amicus curiae of United States filed. |
| Jul 17 2009 | Consent to the filing of amicus curiae briefs in support of either or neither party received from counsel for the respondent. |
| Jul 17 2009 | Brief amicus curiae of National Association of Brankruptcy Trustees filed. |
| Jul 17 2009 | Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for the petitioner. |
| Aug 17 2009 | SET FOR ARGUMENT Tuesday, November 3, 2009 |
| Aug 17 2009 | CIRCULATED. |
| Aug 24 2009 | Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. |
| Sep 18 2009 | Brief of respondent Nadejda Reilly filed. (Distributed) |
| Sep 25 2009 | Brief amici curiae of National Association of Consumer Bankruptcy Attorneys, et al filed. (Distributed) |
| Oct 2 2009 | Record received from the U.S.C.A. for the Eighth Circuit and the U.S.D.C. record is included (1 envelope and 1 CD). |
| Oct 5 2009 | Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED. |

Oct 19 2009 Reply of petitioner William G. Schwab filed. (Distributed)

Nov 3 2009 Argued. For petitioner: Craig Goldblatt, Washington, D.C.; and Jeffrey B. Wall, Assistant to the Solicitor General, Department of Justice, Washington, D.C. (for United States, as amicus curiae.) For respondent: G. Eric Brunstad, Jr., Hartford, Conn.

| Name | Address | Phone |
|---|---|---|
| **Attorneys for Petitioner:** | | |
| Craig Goldblatt<br>Counsel of Record | Wilmer Cutler Pickering Hale and Dorr LLP<br>1875 Pennsylvania Avenue, NW<br>Washington, DC 20006<br>craig.goldblatt@wilmerhale.com | (202) 663-6483 |
| Party name: William G. Schwab | | |
| William G. Schwab | P.O. Box 56<br>811 Blakeslee Boulevard Drive East<br>Lehighton, PA 18235 | (610) 377-5200 |
| Party name: William G. Schwab | | |
| Seth P. Waxman | Wilmer Cutler Pickering Hale and Dorr LLP<br>1875 Pennsylvania Avenue, N.W.<br>Washington, DC 20006<br>seth.waxman@wilmerhale.com | (202) 663-6000 |
| Party name: William G. Schwab | | |
| **Attorneys for Respondent:** | | |
| G. Eric Brunstad Jr.<br>Counsel of Record | Dechert LLP<br>90 State House Square<br>Hartford, CT 06103<br>eric.brunstad@dechert.com | (860) 524-3999 |
| Party name: Nadejda Reilly | | |
| Gino L. Andreuzzi | 85 Drasher Road, Suite H<br>Drums, PA 18222 | |
| Party name: Nadejda Reilly | | |
| **Other:** | | |
| William Carl Heuer | Duane Morris LLP<br>1540 Broadway<br>New York, NY 10036 | (212) 692-1000 |
| Party name: National Association of Consumer Bankruptcy Attorneys, et al. | | |
| Elena Kagan | Solicitor General | (202) 514-2217 |

United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
SupremeCtBriefs@USDOJ.gov

Party name: United States

Martin P. Sheehan — Sheehan & Nugent PLLC — (304) 232-1064
41 Fifteenth Street
Wheeling, WV 26003

Party name: National Association of Bankruptcy Trustees

Jeffrey B. Wall — Assistant to the Solicitor General
Department of Justice
Washington, DC 20530

Party name: William G. Schwab v. Nadejda Reilly

# PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED

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No. 08-

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IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, Esquire,
TRUSTEE for NADEJDA REILLY,

*Petitioner,*

*v.*

NADEJDA REILLY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN,
CORVELEYN, WOLFE, & FERERI P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

WILLIAM G. SCHWAB
*Counsel of Record*
JOSEPH G. MURRAY
WILLIAM G. SCHWAB
& ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd.
Drive East
Lehighton, PA 18235
(610) 377-5200

*Attorneys for Petitioner*

218269

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## QUESTIONS PRESENTED

The Third Circuit affirmed the United States District Court for the Middle District of Pennsylvania, which held that when the values on a debtor's list of assets and on her claim of exemptions are equal, a Chapter 7 Trustee must object to a debtor's claim of exempt property within 30 days in order to retain his statutory authority to later sell property for the benefit of creditors.

Because of the wide and contradictory array of judicial decisions construing this Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 180 (1992), three questions are presented:

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003, even though the amount claimed as exempt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress' exclusive power to legislate in the field of bankruptcy when it created new trustee duties and when it created unlimited "in kind" exemptions where the statute contains specific dollar–value limitations?

## LIST OF PARTIES

The parties below are listed in the caption. William G. Schwab, the Petitioner ("Schwab"), was appointed as the Chapter 7 Trustee in the bankruptcy case of Nadejda Reilly, the Respondent ("Reilly").

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## STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Third Circuit's opinion was rendered on July 21, 2008.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Constitutional Provisions

*Article 1.- The Legislative Branch*

Section 1 — The Legislature

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 8 — Powers of Congress

The Congress shall have Power. . . .

[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;

## Statutory Provisions

Section 522 (d)(5) and (6), Title 11, United States Code:

522. Exemptions.

. . .

(d) The following property may be exempted under subsection (b)(2) of this section:

. . .

(5) The debtor's aggregate interest in any property, not to exceed in value $925 plus up to $8,725 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

## STATEMENT OF THE CASE

The Respondent Nadejda Reilly ("Reilly") filed her chapter 7 bankruptcy petition and related schedules on April 21, 2005. On her Schedule B, her list of personal property, she included business equipment for which she estimated a value of $10,718. On her Schedule C, by which she claimed her exemptions, she combined two exemptions to equal the purported value of the business equipment: $10,718. The type of property which Reilly exempted under those two exemptions was the type allowed by those exemptions. The value of the business equipment was within the dollar amount limitations of those exemptions.

In chapter 7 cases, a bankruptcy trustee is appointed. The duties of a Chapter 7 Trustee include liquidating the assets of a bankruptcy estate and making distribution to creditors. In this case, the trustee appointed was the Petitioner, William G. Schwab ("Schwab").

A Section 341(a) meeting of creditors, presided over by Schwab, was held and completed on June 22, 2005, thus triggering the 30-day deadline of Bankruptcy Rule 4003 for filing objections to Reilly's claim of exemptions. No objections were filed by any party.

On August 10, 2005, Schwab filed an application seeking approval to employ an auctioneer and a motion seeking to sell the business equipment. Reilly filed an answer objecting to the motion to sell on the grounds that, because the business equipment was supposedly "fully exempt," it could not be administered by the

bankruptcy trustee. Schwab's motion seeking to sell the business equipment, however, did not attempt to deny or limit the claimed exemption in the business equipment of $10,718; rather the motion sought only to sell the equipment, so the amounts received above and beyond Reilly's exemption, the costs of sale and the Trustee's commission could be distributed to creditors pursuant to the distribution scheme laid out in Section 726 of the Bankruptcy Code.

On the grounds that the business equipment was fully exempt, the Bankruptcy Court denied Schwab's motion to sell. According to the Bankruptcy Court, the fact that Schwab did not file an objection to exemptions within the 30-day time period of Bankruptcy Rule 4003 precluded Schwab from administering (selling) the business equipment.

Schwab appealed the Bankruptcy Court's denial of his motion to sell to the United States District Court for the Middle District of Pennsylvania. The United States District Court affirmed the Bankruptcy Court.

Schwab then appealed the order of the District Court to the Court of Appeals for the Third Circuit. By an opinion and order dated July 21, 2008, the Third Circuit affirmed the District Court.

## REASONS FOR GRANTING THE PETITION

Whether a Chapter 7 Trustee should be forced to object within thirty days to every claim of exemption where the value stated in the debtor's list of property is equal to the amount of the claim of exemptions is an important question on which the Courts of Appeal and lower courts are split, and on which this Court's guidance is urgently needed.

The Third Circuit's holding conflicts in various respects with two other circuit court opinions, as conceded by the Third Circuit. Moreover, it not only perpetuates a mis-reading and over-application of *Taylor v. Freeland and Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed 2d 180 (1992), but also places every Chapter 7 Trustee in a position that in order to protect himself in cases like the one at bar, he will have to object to properly-taken exemptions or ask for extensions of time to do so, causing unnecessary expenses to parties, trustees, bankruptcy estates and the bankruptcy courts. The importance and breadth of the issue and the number of times it arises are reflected by the number and variety of recent lower court decisions of all levels on this issue. Since bankruptcy software programs automatically create an exemption amount equal to the value used on other schedules, the scheduling scheme appearing in the case at bar will result in even more such cases.

The Third Circuit's reading of *Taylor* will not only create waste by imposing new trustee duties not already specified by Congress in the bankruptcy statute, but will also improperly increase the amount of exemptions created by Congress.

The federal courts are not constitutionally empowered to create new duties for trustees; nor are they are constitutionally empowered to create unlimited exemptions.

## I. Review is warranted to resolve a conflict between a bankruptcy rule of procedure involving exemptions and the duty of a trustee to sell property for the benefit of creditors.

### A. The Courts of Appeal are split on which valuations require a Trustee to object to claims of exemptions at the beginning of a bankruptcy case in order to later sell property for the benefit of creditors.

The Third Circuit recognized that "there is a split of authority on this issue among courts that have considered it," and noted decisions from the Sixth, Eighth, Ninth and Eleventh Circuits on both sides of the issue. 534 F.3d at 178; 12a. As to the two decisions disagreeing with the Third Circuit, one was seen as distinguishable and the other was seen as inconsistent with the United States Supreme Court decision in *Taylor*. Schwab respectfully submits that the Third Circuit erred in its treatment of both of these cases.

The reasoning of the Third Circuit may be summarized as follows: If a debtor's estimation of the value of property (whether by dollar amount or "unknown") is equal to the amount of the claimed exemption for that property, then the debtor has stated an "intent" to exempt the property in full. A trustee should recognize this intent and then either object to

exemptions or contest valuations; if the trustee doesn't do so within the prescribed time limit of 30-days, he is not permitted to sell the property. Why? Because the property has been exempted "in full."

The circuit court case which the Third Circuit first addressed and which it attempted to distinguish was *In re Hyman*, 967 F.2d 1316 (9th Cir. 1992); there, the property which the debtors were attempting to exempt was their personal residence. Their stated value was $415,000, with $347,611 in encumbrances. The debtors claimed an exemption available under state law and valued it at $45,000, which was less than their equity of $67,389 ($415,000 - $347,611 = $67,389). However, the amount of $45,000 was the limit of the exemption under California state law. When the trustee moved to sell their residence, the debtors objected on the basis that the trustee had not filed objections to exemptions. This argument failed before the 9th Circuit. However, the Third Circuit distinguished the 9th Circuit decision on a basis which is crucial to its reasoning; specifically, that Reilly's valuation on Schedule B and the amount of her exemptions on Schedule C were *equal*. In the view of the Third Circuit, Reilly had expressed an "intent" to exempt the "entire value" of the property, while the debtors in *Hyman* had not. 534 F.3d at 178; 12a – 13a.

Interestingly, the 9th Circuit in *Hyman* noted that the bankruptcy trustee would likely have incurred the wrath of the bankruptcy judge if he had objected to the debtors' claim of exemption of $45,000. Why? Because the debtors were "clearly entitled" to the exemption they claimed. *Hyman*, 967 F.2d at 1319. Yet the failure of Schwab to object to Reilly's claim of exemptions in

the case at bar is exactly why Schwab has been barred from selling the business equipment.

The *Hyman* court also recognized the practical reality that, because the time period to object to exemptions at the beginning of a bankruptcy case is so short [30 days from the creditor's meeting, under Bankruptcy Rule 4003(b)], "it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules. 967 F. 2d at 1319, fn 6. Schwab submits the obvious: there is nothing in the mere reading of Reilly's schedules to alert anyone that the exemptions are improper in any way. Instead of recognizing the practical realities of *Hyman*, the Third Circuit chose the epitome of impracticality: forcing trustees to object to exemptions which are not objectionable.

The Third Circuit conceded that the second opinion from a Court of Appeals with which it disagreed, *In re Wick*, 276 F.3d 412 (8th Cir. 2002), was a closer case than *Hyman*. 534 F.3d at 178; 13a.

In *Wick*, the amount claimed as exempt and the amount given as a value were equal, but not in numbers. In both the debtor's list of assets and in her claim of exemptions, the value stated by the debtor for an *un*vested interest in stock options was "unknown." The 8th Circuit reversed the district court which had barred the trustee from the proceeds of the sale of the stock on the grounds that he had not objected to the debtor's exemption within thirty days of the creditors' meeting, the exact grounds cited by the Third Circuit in the case at bar.

In its treatment of *Wick*, the Third Circuit noted evidence that the debtor may have only intended to exempt part of the value, as if to distinguish the case. Regrettably, this is a distinction without a difference, because when the 8th Circuit addressed the effect of *Taylor* on the case before it, it found that because the debtor was attempting to at least partially exempt the property, the trustee had no basis on which to object. 276 F.3d at 417. More importantly, the Third Circuit found that refusing to allow a debtor to exempt property in full on the grounds that a valuation of "unknown" was insufficient was "inconsistent" with the Supreme Court decision in *Taylor*. 534 F.3d at 179; 14a.

First, the Third Circuit may be faulted for making reference to any evidence in *Wick* that the debtor knew some of the asset may not be exempt. Why? Because, the 8th Circuit rejected the debtor's "contention that listing 'unknown' as the current market value of the exemption is sufficient as a matter of law to make an asset fully exempt." Clearly, the Third Circuit would say otherwise.

Further, the 8th Circuit clearly did not fault the trustee for his failure to object to exemptions. In fact, the 8th Circuit recognized that the debtor had listed a valid statutory basis for exempting her asset and had enough of the exemption left over to partially exempt the asset. The 8th Circuit specifically held that the trustee had *no* basis to object to Ms. Wick's claimed exemption. *Wick*, 276 F.3d at 417. Schwab submits that he was in the same position in the case at bar.

The two cases which the Third Circuit then treated as being in agreement with it were from the 11th and 6th Circuits.

The Third Circuit approved of the case of *In re Green*, 31 F. 3d 1098 (11th Cir. 1994). In this case, the debtor listed a lawsuit as having a value of $1 and listed that same value on her claim of exemptions. The debtor was permitted to keep proceeds far in excess of $1 because the trustee had not objected to exemptions, and because there is an "unstated premise" in *Taylor* "that a debtor who exempts the entire reported value of an asset is claiming the full amount, whatever it turns out to be." *Green*, 31 F.3d at 1100. In the case at bar, review is warranted by this Court because the Third Circuit is faulting the trustee for failing to recognize an "intent" that is not stated in the Bankruptcy Code and which was not created by this Court in *Taylor*. Almost as shocking as inferring an "intent" that has not been clearly expressed, whether in the schedules or in the exemption statute, is the Third Circuit's willingness to construe this intent in favor of - and not against - the person who drafted the schedules and who chose the exemption statute: here, the debtor.[1]

The 11th Circuit in *Green* saw the case before it as similar to *Taylor*. After all, lawsuits which had not yet come to an end were involved in both *Green* and *Taylor*.

---

1. Schwab respectfully submits that the different ways in which the courts have construed the cases in which an asset was valued at $1.00 or exempted using a value of $1.00 reveal the impracticality of requiring a trustee to discern the "intent" of a debtor in claiming exemptions. See, *In re De Soto*, 181 B.R. 704 (Bankr. D. Conn. 1995), discussed *supra*.

In *Taylor*, the lawsuit's value was listed by the debtor as "unknown," both on her list of personal property and on her claim of exemptions. In *Green*, the debtor listed a value of one dollar, both in her list of personal property and in her claim of exemptions. Remarkably, however, the case at bar does not involve an unfinished lawsuit, nor any valuation remotely similar to "unknown" or "one dollar." Even more remarkable is the factor which made the facts in *Green* "materially similar" to the facts in *Taylor*, namely that a value of one dollar sent exactly the same message as "unknown:" the value is contingent and not yet known. This is not the case with the value stated by Reilly.

However, the *Green* opinion does conclude by stating its true view of *Taylor*, a view which illustrates why the case at bar is so different from both *Green* and *Taylor* and which illustrates how the Third Circuit continues to misread and misapply *Taylor*:

> In *Taylor*, the Court made clear that the Bankruptcy Code places the burden on the trustee to object, in a timely manner, to *any improper exemption claims*. The trustee may not wait until the value of a contingent claim is established before deciding whether to object; instead, he must object within the time period allowed by Bankruptcy Rule 4003. *Taylor v. Freeland and Kronz*, 503 U.S., 638, 112 S. Ct. 1644, 1648, 118 L.Ed 2d 280 (1992); see also 11 U.S.C.A. § 522(l) 1993; Bankruptcy Rule 4003, 11 U.S.C.A. (1984) and Supp 1994).

*Green*, 31 F.3d at 1101 (emphasis added). The Third Circuit, in applying *Green*, ignored that while *Taylor*

and *Green* involved contingent claims, the instant case does *not*. The Third Circuit also fully ignored that while Green does refer to the trustee's duty to object to "any improper exemption," there was nothing improper about Reilly's claim of exemption in the instant case.

The second decision of which the Third Circuit approved was from the Bankruptcy Appellate Panel in the 6th Circuit: *In re Anderson*, 377 B.R. 865 (6th Cir. B.A.P. 2007). 534 F.2d at 179-180; *15a-16a*. In this case, the debtor was held to have made an "unambiguous manifestation of intent to seek an unlimited exemption in property." As a result, it did not matter if the actual value of the property listed on Schedule C exceeded the limits of the exemption statute.

The Sixth Circuit in *Anderson* cites *Taylor* for the proposition that, if a trustee is uncertain about an exemption claimed by a debtor, the trustee may seek a hearing on the issue or request an extension of time to object. 377 B.R. at 876. Two failings are apparent here. First, neither *Green* nor *Taylor* (or for that matter, the Third Circuit) identify the procedure to "seek a hearing on the issue." Second, and more important, Schwab in the case at bar was not uncertain about the claim of exemption and had no reason to be uncertain.

In *Taylor*, the asset at issue was a lawsuit. The debtor listed its value as "unknown" when she listed it as an asset, and valued it as "unknown" when she exempted it.

At the creditors' meeting in *Taylor*, the trustee was informed that the debtor might win $90,000 in her

lawsuit. The trustee investigated further, but did *not* object to the claim of exemptions. Later, when the suit settled for $110,000, the trustee pursued the proceeds.

These facts from *Taylor* should be contrasted to the facts in the case at bar.

First, there is no "unknown." In the case at bar, the debtor listed a value: a specific dollar amount, not $1 or any amount to indicate that the value was contingent, but rather $10,718.

Second, there is no evidence in the record to show that an investigation should have been commenced by the Schwab or that one was. Surely, this is not surprising. Since the type of property claimed as exempt by Ms. Reilly is the type of property permitted by the statute, and since the dollar amount claimed by Ms. Reilly is within the statutory dollar amount limitations, the signals that alerted the trustee to investigate in *Taylor*, and which should have prompted objections to exemptions in that case, are not present in the case at bar.

Before leaving the conflicts among the Courts of Appeal and moving to the conflicts among the lower courts, it is important to identify another concept, in addition to "intent," which has crept into some of the judicial decisions construing exemptions, but which is also absent in the exemption statute. That concept is the "in kind" exemption. Not only is the concept not found in the statute, but it specifically contradicts those exemptions that are limited to a specific dollar amount. More specifically, the use of the term "in kind" denies

the specific dollar-value limitations placed on exemptions within Section 522(d), including the two exemptions chosen by Reilly in the case at bar.

### B. The lower courts have neither uniformly applied *Taylor*, nor followed those Courts of Appeal construing *Taylor*, resulting in a wide and contradictory array of decisions.

That the issue presented by Schwab requires clarification by the Supreme Court is evident not only from the conflict among the Courts of Appeal, as described above, but also from the opinions of lower courts. This conflict was noted by the 6th Circuit BAP in *Anderson*, citing *In re Heflin*, 215 B.R. 530, 534 (Bankr. W.D. Mich. 1997), and *In re Jones*, 357 B.R. 888, 892 (Bankr. M.D. Ga. 2005).

In *Heflin*, the debtor who claimed a specific dollar amount as exempt was bound by that amount and was not permitted to claim that "the entire property is exempt." Schwab submits that *Heflin* is very instructive in understanding the range of decisions within the lower courts. The bankruptcy court acknowledged the debtor's attempt to apply *Taylor*, but found certain red flags in *Taylor* that should have caused the trustee to object, but were not present in the case before it. The debtor in *Taylor* didn't provide a statutory basis for the claimed exemption and also listed the value as "unknown." After comparing the case before it to *Taylor*, the *Heflin* court concluded as follows:

> Thus, unlike the facts in *Taylor*, this case does not involve a situation where the Trustee has

> failed to object to an improper exemption and then is bound by the consequences of his decision. Rather, the Trustee in this case did not object because there was both a valid statutory basis for the exemptions and the amount was within the statutory limits. Indeed, if the Trustee had filed an objection, it most likely would have been denied because the specific exemptions claimed in the Debtor's schedule are legally valid.

*Heflin*, 215 B.R. at 533-534. The *Heflin* court then specifically rejected the argument that the trustee should have objected to the valuation, citing *In re Hyman*, supra, and holding as follows:

> Although the *Hyman* case involved the California homestead exemption as opposed to the federal residence exemption, the general principle is the same, *i.e.*, where the debtor claims a specific dollar amount as exempt, the debtor is bound to that amount and (absent a subsequent amendment) can not claim that the entire property is exempt.

*Heflin*, 215 B.R. at 534. After noting that *Hyman* was reaffirmed by the 9th Circuit in *In re Alsberg*, 68 F.3d 312 (9th Cir. 1996), the *Heflin* court concluded:

> Therefore, this court holds a trustee is *not* legally required to object to a debtor's scheduled value relating to a specific value.

*Heflin*, 215 B.R. at 535 (emphasis added). *Heflin* also stands for the proposition that a Trustee should not be

put in the "untenable position of having to 'object first and ask question later,'" and that nothing in the Bankruptcy Code requires a trustee to object to the valuation stated by a debtor in his schedules. 215 B.R. at 535-536.

Although the end result in *In re Jones*, *supra*, may be read in contrast with *Heflin*, *Jones* could also be distinguished from other cases holding against the trustee on the basis that the debtor in *In re Jones* *expressed* an intent, a far cry from inferring intent or identifying an "unstated premise." In *Jones*, the debtor's exemptions claimed a specific dollar amount in property whose encumbrances exceeded its value. 357 B.R. at 897. But he *also* filed an addendum to his exemptions stating that he wanted to "exempt everything available to him under the law." This addendum settled the question for this particular court:

> The law as set forth in *Taylor* allows a debtor to exempt a property in its entirety, even if its value exceeds the amount specified in the exemption statute in the absence of an objection by the trustee.

*Jones*, 357 B.R. at 898. The addendum in *Jones* is not present in the case at bar. All that is present is a list of equipment and a claim of exemption with the same value placed by the debtor on both.

Another lower court case which agrees with the Third Circuit holding that, when the exemption amount is equal to the valuation amount, as estimated by the debtor in his or her initial filing, the trustee must object

within 30 days or is barred from selling assets is: *In re Zupansic*, 259 B.R. 388 (M.D. Fla. 2001). This court stated that, only when the debtor's stated value was more than the stated exemption amount would the trustee be permitted to sell property after having not objected.

Within the 2nd Circuit, an example is *In re DeSoto*, 181 B.R. 704 (Bankr. D. Conn. 1995), in which a bankruptcy court held that the debtor's exemptions of $1 in stock, which the debtor valued at exactly the same amount, did *not* prevent the trustee from selling the stock.[2] This case not only contradicts the Third Circuit in the case at bar, but also, at the very least, serves to limit *Taylor*. The Bankruptcy Court addressed the debtors' assertion of the *Taylor* decision. The court noted that the valuation in *Taylor* was "unknown," but the evaluation in the case before it was $1.00. The court saw the difference as "subtle, but highly material." The court explained:

> These differences are material because they serve to motivate a reasonable trustee, or other interested party, to distinctly different courses of action. Under *Taylor*'s scheduling scheme, the trustee was fairly and reasonably on notice that his failure to object to the exemption claim could deprive the bankruptcy estate of the value in a open-ended amount. Under the Debtor's scheduling in this case,

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2. See footnote no. 1 on how valuations and exemptions of $1.00 illustrate the unfairness of requiring trustees to infer "intent" from a debtor's schedules.

> the Trustee had reasonable expectation that the exemption claim could not deprive the Estate of more than the liquidated amount stated, *i.e.*, $1.00.

*DeSoto*, 181 B.R. at 708. Moreover, the bankruptcy court specifically rejected any "judicially–created deadline for a trustee to object to the valuation of property." 181 B.R. at 708. The court found no such requirement in the Bankruptcy Code or in *Taylor*.

An example within the 7th Circuit is *In re Sherbahn*, 170 B.R. 137 (Bankr. N.D. Ind. 1994). This case recognized that the value of property in a bankruptcy case is *not* determined by the number placed by the debtor on his list of assets or on his claim of exemptions; rather, it is determined by the value brought at sale. 170 B.R. at 139. The bankruptcy court also limited a debtor's exemption to the amount claimed, even to the exclusion of the debtor's description of the property:

> The court concludes that the amount of a claimed exemption is controlled by the value the debtor ascribes to it in the schedule of exemptions, which in this case was $5,950.00.

*Sherbahn*, 170 B.R. at 140.

A case within the 6th Circuit is *In re Einkorn*, 330 B.R. 570 (Bankr. E.D. Mich. 2005). The debtor took a $1 exemption in property which he valued at $1,000.00 and which had a lien of $1,000.00. The debtors argued that the lack of equity and their $1.00 exemption claim resulted in the property being "completely exempted."

330 B.R. at 571. The debtors asserted *Taylor*, and the argument failed, because the amount and exemption in *Taylor* was "unknown" and the amount in the case before it was $1.00.[3] The trustee did *not* object to the claim of exemptions; but the Bankruptcy Court *granted* the trustee's motion to sell, and refused to put bankruptcy trustees in the untenable position of having to object first and ask questions later. *In re Einkorn*, 330 B.R. at 572, citing *In re Heflin*, 215 B.R. 530, 535-356 (Bankr. W.D. Mich. 1997).

In the same Circuit as *Anderson* (one of the cases cited with approval by the Third Circuit), two courts have ruled contrary to the 6th Circuit Bankruptcy Appellate Panel within the past year, specifically the bankruptcy court in *In re Cormier*, 382 B.R. 377 (Bankr. W.D. Mich. 2008), and the district court in *In re Lewandowski*, 386 B.R. 643 (E.D. Mich. 2008).

The bankruptcy court in *Cormier* examined the entire "decisionary history" of *Taylor* to determine what the decision says and what it doesn't say, and concluded that, if one wants to determine how an exemption is claimed, one must start with the statute itself. 382 B.R. at 389-391. The court criticized the "*Anderson Bankruptcy* judge-invented mechanical formula" created by the 6th Circuit, and held that the "in kind" exemption did not give enough weight to the "not to exceed in value" language which is found in the statute. 382 B.R. at 393. The bankruptcy court noted that some

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3. See footnote no. 1 on how valuations and exemptions of $1.00 illustrate the unfairness of requiring trustees to infer "intent" from a debtor's schedules.

exemptions have monetary limitations, and some do not. Therefore, if one presumes Congress acts intentionally, then the difference between the two types of exemptions must mean something. 382 B.R. at 394. The bankruptcy court further held that the "*Anderson Bankruptcy* mechanical formula invented to establish a presumed claimed in-kind exemption" is not saved by the Bankruptcy Rules. 382 B.R. at 395.

In *Lewandowski*, the district court could not have been more clear that Section 522(d)(5) does not allow for "in-kind exemption of the entire property." 386 B.R. at 643. The debtors listed an amount in their claim of exemptions and, in the view of the district court, that specific amount would be the extent of their exemptions. Further, because the trustee believed the claim of exemptions was proper, there was no reason to object. The district court distinguished *Taylor* on the basis that *Taylor* was not a case concerning valuation.

From the same circuit as *Hyman*, which the Third Circuit attempted to distinguish, is the case of *In re Chappell*, 373 B.R. 73 (9th Cir. B.A.P 2007). The court agreed with the 9th Circuit in *Hyman* that, because the time to object to exemptions is so short under Rule 4003, trustees and creditors must be able to determine if an exemption is valid "simply by reading a debtor's schedules." 373 B.R. at 77, quoting *Hyman*, 967 F.2d 1316, 1319, fn. 6 (9th Cir. 1992). The debtors were held to the dollar amount of their exemption, which was the amount remaining after fees were deducted from their stated value of the property. The court distinguished *Taylor* on the basis that the value in *Taylor* was "unknown" and distinguished *Green* on the basis that

the debtor's valuation of $1.00 for a lawsuit was a *contingent* valuation and *not* that it was worth $1.00. 373 B.R. at 78.[4]

Finally, and most recently, is a case within the 2nd Circuit. This case focuses on the *document* claiming the exemption and not on the "intent" of the debtor. In *In re Raffone*, 381 B.R. 30 (Bankr. D. Conn. 2008), the Bankruptcy Court examined the phrase "property exempted" as used in Section 522(c). The court held that "property exempted" means exactly that which was claimed by the debtor, "nothing more, nothing less." In the case at bar, Schwab sought to give Ms. Reilly exactly the value she listed on two separate documents: nothing more, nothing less.

The court in *Raffone* also recognized the Congressional intention that certain exemptions should have a fixed and limited valued. A debtor is bound to the amount claimed, an amount within the "not to exceed in value" language of Section 522(d)(5).

Thus, while the Third Circuit holding would require a trustee to discern "intent," Schwab seeks to provide Reilly with exactly the value she stated in her claim of exemption. While the Third Circuit focuses on the property, independent of its value, the exemption statute speaks in terms of value: a specific and limited value. In fact, Schwab's view of that to which Reilly is entitled is

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4. See footnote no. 1 on how valuations and exemptions of $1.00 illustrate the unfairness of requiring trustees to infer "intent" from a debtor's schedules.

mandated by the specific wording of the exemption provisions *chosen by Reilly*: subsections (5) and (6) of Section 522(d). The exact statutory language is as follows:

> §522. Exemptions
>
> . . .
>
> (d) The following property may be exempted under subsection (b)(1) of this section:
>
> . . .
>
> (5) The debtor's aggregate *interest* in any property, *not to exceed in value* $925 plus up to $8,725 of any unused amount of the exemption provided under paragraph (1) of this subsection.
>
> (6) The debtor's aggregate *interest, not to exceed $1,750 in value,* in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

Section 522 (d)(5) and (6), Title 11, United States Code (emphasis added). From the proposed sale, Schwab wished to give Reilly the amount of her *interest* in the business equipment, *not to exceed* the specific dollar limitations specified in the statute. Nothing more. Nothing less.

## II. Review is warranted because the holding of the Third Circuit will require every trustee to object to countless claims of exemptions in order to protect his duty to sell property which exceeds the value estimated by the debtor.

There is nothing about Reilly's claim of exemptions which was out of the ordinary. Was she allowed to exempt this *type* of property under the exemptions she claimed? Yes. Was the value she was exempting equal to or less than the value which is permitted by the statute? Yes.

Thus, Reilly's claim of exemptions is no different from countless other claims of exemptions. This is especially so when, as noted by the *amicus* before the Third Circuit, the software programs which prepare debtors' schedules will routinely default to placing a value in the claim of exemptions that is equal to that listed in the debtor's list of assets. Differentiating Reilly's case from others, however, is that the *actual* value of the property exceeded the value Reilly estimated in her Schedule B (in which she is required to identify and give her opinion on the value of all of her assets) and her Schedule C (in which she may, if she chooses, exempt some or all of the property listed on Schedule B). Of course this differentiating factor is not apparent from a reading of the schedules.

In the instant case, Schwab has never attacked the validity of the exemption. If Schwab were to sell the business equipment, Reilly would receive exactly the specific dollar amount she exempted in her claim of exemption: $10,718.00.

If Reilly's exemptions look like so many others, what are trustees to do in the future? After all, isn't it at least possible that property described in *any* claim of exemptions that appears to be properly completed could be worth more than the value estimated by the debtor? Yes.

The Third Circuit's answer to this problem is that every time the valuation on the claim of exemptions equals the valuation on the debtor's list of assets, the trustee should, within thirty days of the creditor's meeting, either object to an exemption or request an extension to do so. To this suggestion, Schwab raises two questions. First, on what basis should a trustee object or move for an extension if the debtor properly completes the claim for exemption? Second, should the trustee be expected to object in every case?

There was nothing objectionable about Reilly's claim of exemptions. For Schwab to object would have been to risk sanctions. The only alternative is to ask for an extension of time, but again, in every case? What purpose would be served by a trustee doing so when he already intends to give a debtor the value stated by the debtor on his claim of exemptions?

Since a properly-completed claim of exemption with an accurate value looks the same as a properly-completed claim of exemption with a valuation that only later proves to be inaccurate, the decision of the Third Circuit leaves trustees with no choice but to file objections which may be sanctionable or to file requests for extensions which may prove to be wasteful.

## III. Review is warranted because the Third Circuit, in two separate instances, has unconstitutionally encroached on Congress's exclusive power to legislate in the field of bankruptcy.

### A. Only Congress may legislate in the field of bankruptcy by passing uniform laws.

The Third Circuit opinion implicates two provisions of the United States Constitution. First, the Constitution provides that only Congress may legislate:

> *Article 1. – The Legislative Branch*
> Section 1 — The Legislature
>
> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Constitution, Article 1, Section 1.

Second, Article 1, at Section 8, provides that the laws which Congress passes within the field of bankruptcy must be uniform:

> Section 8 — Powers of Congress
>
> The Congress shall have Power. . . .
> [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;

Article 1 leaves no room for the federal courts to be legislating in the field of bankruptcy. As stated in *In re Contract Interiors, Inc.*, 14 B.R. 670 (Bankr. E.D. Mich. 1981):

> A court, however, does not have the power to legislate; it must merely accept what the legislature has written. It is "not at liberty to revise while professing to construe." *Sun Printing and Publishing Assoc. v. Remington Paper and Power Co.*, 235 N.Y. 338, 346, 139 N.E. 470 (1923).

*In re Contract Interiors, Inc.*, 14 B.R at 676. In the case at bar, the Third Circuit has not only legislated in the field of bankruptcy, but has done so in a non-uniform way, as described below.

**B. By creating new duties for trustees, the Third Circuit encroached on Congress' exclusive power to pass uniform laws in the field of bankruptcy.**

The duties of a Chapter 7 Trustee are identified in Section 704 of the Bankruptcy Code. In carrying out the duty to maximize the amount distributed to the estate's creditors, a trustee may sell property and, after deducting the costs of sale, his own commission, and the amount of a debtor's exemptions, distribute the remaining proceeds to creditors. Clearly, this can not all happen shortly after a case is commenced, and surely not within 30 days of the meeting of creditors. After all, Section 341(a) require that the meeting of creditors be scheduled shortly after the commencement of the

bankruptcy case. In fact, section 704(1) addresses the reality that, although this process of administering a bankruptcy estate may take time, it should not take too long. Section 704(1) read as follows when Ms. Reilly commenced her bankruptcy case:

> **704. Duties of Trustee**
>
> The trustee shall —
>
> > 1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interest of the parties in interest.

Section 704(1), Title 11, United States Code.[5]

The practical realities and the balancing exhibited by Section 704(1) are denied by the Third Circuit's holding. In a case such as the one at bar, in which the claim of exemptions appears to be properly completed, the holding would require the trustee, within 30 days of the Section 341(a) meeting of creditors, to either object to such exemptions, or file extensions of time to do so, in order to protect his duty to "collect and reduce to money the property of the estate for which the trustee

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5. The debtor commenced her case on April 21, 2005, the day after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8. The amendments provided for the changes to Section 704 to become effective 180 days after April 20, 2005. The text quoted above [which is now numbered §704(a)(1)] was *not* changed by the amendments.

serves." But, Section 704(1) of the Bankruptcy Code does not set such time limits. Of course, Congress could have set a time limit if it chose to, either for the complete administration of the case, or for the intermediate steps of valuing and selling property, but it chose not to do so.

The Third Circuit, however, in the case at bar where a debtor has inaccurately stated a value, has now imposed a deadline on trustees that will either cause them to file unnecessary pleadings or risk losing assets that could be sold for the benefit of creditors. Neither of these results was intended by Congress when it legislated a trustee's duties. However, not only has the Third Circuit chosen to legislate when it is not permitted to do so, but it has legislated in a non-uniform way. In some circuits, the duties of trustees, at the very beginning of a bankruptcy case, will include objecting to exemptions or requesting an extension of time to do so every time a valuation on a list of assets is equal to the valuation on an exemption. In other circuits, trustees will not be bound to a debtor's valuation; in other words, they will not be required to object to exemptions in order to be permitted to later sell assets for the benefit of creditors.

### C. By enlarging the exemptions available to debtors, the Third Circuit encroached on Congress' exclusive power to pass uniform laws in the field of bankruptcy.

The Bankruptcy Code lists the types of property which may be exempted. With some of these exemptions, different limitations on value are provided. These limitations are expressed in specific dollar amounts. Property which is not exempted is subject to being sold by a Chapter 7 Trustee, with the proceeds being distributed to creditors.

The exemptions to which a debtor is entitled are stated in the Bankruptcy Code, adopted by the Congress of the United States to regulate the relationship between debtors and creditors. These exemptions are neither a matter of common law nor a creation of the judiciary.

The Third Circuit had no difficulty with Reilly's incorrect valuation of her property; instead, it faulted Schwab for not filing an objection within thirty days under Rule 4003(b). Rule 4003 is not a creation of Congress. Rule 4003 is a Rule of Bankruptcy Procedure promulgated pursuant to the Supreme Court's rule-making authority. Rule 4003 reads as follows:

> **Rule 4003. Exemptions**
>
> (a) Claim of exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to

claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions. A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfer of exempt property. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

Rule 4003, Federal Rules of Bankruptcy Procedure. As Schwab argued in the court below, the Rule makes no

mention of valuation, let alone a deadline to commence a dispute regarding valuation. More importantly, the court below cited no rule that requires a trustee to object to a valuation stated by a debtor in his or her schedules, whether in Schedule B which lists personal property, or in Schedule C, which states the value of property to be exempted. Yet, *both* these valuations are necessary underpinnings to the Third Circuit's reasoning.

Interestingly, a debtor's estimated value should be irrelevant when it comes to the trustee's decision to sell property for the benefit of creditors. Regardless of the value of the debtor's property, it becomes property of the estate. Either the trustee chooses to sell it, because it has an actual value above and beyond liens and exemptions, or he doesn't, such as when there would be nothing left after liens and exemptions. In either case, a debtor receives the amount of his or her exemption.

By its holding that Schwab should have objected to Reilly's claim of exemptions within 30 days of the creditor's meeting, and by preventing him from selling the business equipment on the basis that he did not read Reilly's "intent," supposedly revealed by the equality of the numbers on Schedule B and Schedule C, the Third Circuit effectively rewrote the federal exemptions, which it has no constitutional authority to do. Instead of Reilly having limited exemptions, as was intended by Congress, and instead of Reilly being limited to the *value* to which *she* attested, the Third Circuit holding grants her to a greater exemption: the *entire* fair market value of the business equipment.

What rationale would the Third Circuit have for creating an unlimited exemption that contradicted the limited, dollar-value exemption provisions in the Bankruptcy Code? The answer is apparent from the language of the opinion which addresses the "fresh start." 534 F.3d at 180; 16a -17a. Schwab submits that the property to which debtors are entitled for purposes of a fresh start was determined by Congress when it created some exemptions unlimited in amount and created others limited by a specific dollar value, such as the two provisions chosen by Reilly in the instant case. The dollar limitations are clearly stated in the statute, and the dollar value claimed by Reilly was clearly stated. For the Third Circuit to infer an "intent" from the equality of two numbers, and then to require Schwab to discern that intent, goes far beyond that which a court may do in construing a statute:

> There is no need for resort to the rules of interpretation or construction when the language of the statute is plain and free from ambiguity. *Osaka Shosen Kaisha Line v. United States*, 300 U.S. 98, 57 S. Ct. 356, 81 L. Ed. 532; *Adams Express Co. v. Commonwealth of Kentucky*, 238 U.S. 190, 35 S. Ct. 824, 59 L. Ed. 1267; *Athens Stove Works v. Fleming, supra, and Braffith v. People of Virgin Islands, supra.*

*In re Shear*, 139 F. Supp. 217, 221 (N.D. Calif. 1956). In Section 522(d)(5) and (6), the limited, dollar-value exemptions drafted by Congress and chosen by Reilly, the language is plain and free from ambiguity. By inserting "intent" into the statute where it does not exist,

the Third Circuit has failed to follow Justice Brandeis' view of the judicial function:

> What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function. Compare *United States v. Weitzel*, 246 U.S. 533, 543, *Peoria & Pekin Union Ry. Co. v. United States*, 263 U.S. 528, 534, 535.

*Iselin v. United States*, 270 U.S. 245, 250-251, 46 S. Ct. 248, 250, 70 L. Ed. 566, 569-570 (1926). The Third Circuit did not construe Section 522(d)(5) and (6); it enlarged the statute.

Of course, this is again not only an instance of a federal court engaging in legislation, but also a federal court doing so in a non-uniform way. Instead of there merely being differences where a state has chosen to "opt out" of the federal exemptions, debtors in some circuits will now receive unlimited exemptions without even expressly asking for them, while debtors in other circuits will be limited to the specific dollar amounts specified in the their claims of exemption, as expressly limited by the exemption statute.

If Congress wished to make the exemptions of Section 522(d)(5) and (6) unlimited in amount, it could have done so when it last amended the Bankruptcy Code.[6] After all, it is Congress, not the federal courts,

6. See footnote no. 5.

to whom the Constitution leaves the responsibility to define "fresh start" for those who file bankruptcy. However, just as Congress did not choose to create the additional duties on trustees created by the Third Circuit holding, as described above, Congress did not chose to grant unlimited exemptions to debtors.

## CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

WILLIAM G. SCHWAB
*Counsel of Record*
JOSEPH G. MURRAY
WILLIAM G. SCHWAB
& ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd.
Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN,
CORVELEYN, WOLFE, & FERERI P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

*Attorneys for Petitioner*

# APPENDIX

**APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED JULY 21, 2008**

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

No. 06-4290

IN RE: NADEJDA REILLY,

Debtor

WILLIAM G. SCHWAB, Chapter 7 Trustee,

Appellant

Argued November 6, 2007

Before: SCIRICA, *Chief Judge*, AMBRO, and JORDAN, *Circuit Judges*

(Opinion filed July 21, 2008)

OPINION OF THE COURT

AMBRO, *Circuit Judge.*

We decide whether a Chapter 7 trustee who does not lodge a timely objection to a debtor's exemption of personal property may nevertheless move to sell the property if he later learns that the property value exceeds the amount of the claimed exemption. Where,

as here, the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemption of its full value and the trustee does not object in a timely manner, we hold that the debtor is entitled to the property in its entirety.

## I. Background

Debtor Nadejda Reilly is a cook with a one-person catering business. On April 21, 2005, she filed a Chapter 7 bankruptcy petition with all of the necessary schedules and statements. Relevant to this appeal, she listed as personal property on her Schedule B an entry of "business equipment" with a value of $10,718. On her Schedule C, where Reilly claimed certain property as exempt from the bankruptcy, she again listed the "business equipment" with a value of $10,718. She claimed an exemption for the full $10,718 value of the property, asserting $1,850 of it under 11 U.S.C. § 522(d)(6) and $8,868 under 11 U.S.C. § 522(d)(5). Appellant William Schwab, who serves as the bankruptcy trustee in this matter, did not object to the exemption within the 30-day period prescribed by Federal Rule of Bankruptcy Procedure 4003(b).

Schwab later sought an appraisal of the business equipment—which consists of catering utensils and instruments—and determined it to have a value of approximately $17,200. He then filed a motion before the Bankruptcy Court to sell the business equipment in order to recoup the value, less the $10,718 exemption, for the bankruptcy estate. Reilly filed a timely answer

to the motion to sell, asserting that the business equipment had become fully exempt when the period for filing an objection expired and was therefore not subject to sale by the trustee.

The Bankruptcy Court for the Middle District of Pennsylvania held a hearing on the matter and ultimately denied Schwab's motion to sell. It agreed with Reilly that the property was fully exempt from the bankruptcy estate because Schwab had not filed a timely objection to Reilly's claim of exemption. Schwab appealed, but the District Court for the Middle District of Pennsylvania denied the appeal. Specifically, the District Court found that Reilly had demonstrated her intent to exempt the entire value of the business property by listing the $10,718 figure as both the value of the property and the amount of the exemption. Because she exempted the entire value without a timely objection from the trustee, the District Court held that Reilly was entitled to the entire value of the exempted property, even if it was worth more than she had stated on the exemption forms. Schwab now appeals to us.

## II. Jurisdiction and Standard of Review

The Bankruptcy Court had jurisdiction pursuant to 28 U.S.C. §§ 157(b) and 1334. The District Court had jurisdiction under 28 U.S.C. § 158(a)(1). We have jurisdiction pursuant to 28 U.S.C. §§ 158(d)(1) and 1291. Our review is plenary. *See Interface Group-Nevada, Inc. v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc.)*, 145 F.3d 124, 130 (3d Cir.1998). In

exercising plenary review, we apply the same standard as the District Court. *Id.* at 131. Thus, we "review the bankruptcy court's legal determinations *de novo*, its factual findings for clear error[,] and its exercise of discretion for abuse thereof." *Id.* (citing *Ferrara & Hantman v. Alvarez* (*In re Engel*), 124 F.3d 567, 571 (3d Cir.1997)).

## III. Analysis

### A.

When a debtor files for bankruptcy under Chapter 7, he or she must file, among other items, a document known as a "Schedule B," which lists all of his or her personal property. Fed. R. Bankr.P. 1007(b)(1). This property forms the basis of the estate to be distributed to creditors. 11 U.S.C. § 541. The debtor is allowed to claim certain property as exempt from the bankruptcy estate, such that it is not distributed to creditors. *Id.* § 522.[1]

In order to exempt property from the bankruptcy estate, the debtor must file "a list of property that the

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1. Specifically, § 522(d) lists the categories of and amounts for property that may be exempted from bankruptcy. As noted, Reilly claimed $1,850 of the business equipment exempt under § 522(d)(6), which allows for the exemption of the debtor's tools of her trade. She claimed the remaining $8,868 as exempt under § 522(d)(5)'s "wildcard" exemption, which allows the debtor to protect, subject to monetary caps, miscellaneous property of her choosing.

debtor claims as exempt." *Id.* § 522(*l*). This document is known as a "Schedule C," and it requires the debtor to list both the value of the exemption claimed and the current market value of the property before the exemption is taken.

After the debtor files the bankruptcy petition and appropriate schedules, the bankruptcy trustee holds a meeting of the creditors, where he verifies the information contained in the debtor's materials. *Id.* § 341. After this meeting, any party in interest, including the bankruptcy trustee, can object to an exemption taken by the debtor on his or her Schedule C. This process is governed by Federal Rule of Bankruptcy Procedure 4003. It provides in relevant part:

> (a) Claim of exemptions.
>
> A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.
>
> (b) Objecting to a claim of exemptions.
>
> A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors

> held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.
>
> (c) Burden of proof.
>
> In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections. . . .

Fed. R. Bankr.P. 4003. Under Rule 4003(b), then, the trustee, as a party in interest, has 30 days from the close of the creditors' meeting under § 341(a) (or the date of filing any supplemental schedules or amendment to the exempt-property list, whichever is later)[2] to object to any exemptions a debtor claimed on his or her Schedule C. If no objection is made, "the property claimed as exempt on [the Schedule C] is exempt." 11 U.S.C. § 522(*l*).

---

2. As we know of no such supplemental schedule or amendment, we use throughout this opinion the close of the creditors' meeting as our starting point.

As noted, Reilly claimed her business equipment as exempt on her Schedule C, and she listed the value of the property as $10,718 and the value of the exemption as $10,718. The trustee, Schwab, did not object to Reilly's exemption of her business equipment within 30 days of the conclusion of the creditors' meeting, nor did he timely seek an extension of the time in which to make an objection. Schwab, however, argues that he was not required to file a timely objection because he was not objecting to the propriety of Reilly taking the exemption as such; rather, his objection goes to the value of the property claimed as exempt. Stated another way, he contends that Rule 4003 and § 522( *l* ) only place a 30-day limit on the trustee's ability to object to an exemption on the ground that it was not properly taken—that there is no statutory basis for claiming the exemption—and does not control objections to property valuation. Schwab claims that applying Rule 4003 to objections to an exemption's valuation would invite gamesmanship among debtors, who would seek to undervalue their assets. He also asserts that trustees would be forced to object to the valuation of an exemption every time the debtor values the property and the exemption identically.

B.

The starting point for our analysis is the Supreme Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992). There the Court had an opportunity to consider the application of Rule 4003's 30-day limit on objections to exemptions.

*Appendix A*

The debtor in *Taylor* had filed a Chapter 7 petition for bankruptcy while she was pursuing an employment discrimination claim on appeal before the Pennsylvania Supreme Court. On her schedules before the Bankruptcy Court, she listed as exempt the proceeds from her lawsuit and claim for lost wages. She listed both the value of the asset and the amount of the exemption as "unknown." *Id.* at 640, 112 S.Ct. 1644. During the initial meeting of creditors, the debtor's attorneys informed the bankruptcy trustee that the debtor might win a $90,000 judgment in her suit. After the creditors' meeting, the trustee investigated the potential lawsuit further, but ultimately did not object to the claimed "unknown" exemption. *Id.* at 640-41, 112 S.Ct. 1644. The lawsuit later settled for $110,000, $71,000 of which was paid by a check to the debtor and her attorneys. The debtor signed this check over to her attorneys as payment for their representation, and the trustee filed a complaint against the attorneys in Bankruptcy Court, contending that the money was part of the bankruptcy estate. *Id.* at 641, 112 S.Ct. 1644. The Supreme Court disagreed, holding that the trustee had forfeited his right to challenge the claimed exemption by not filing a timely objection.

Justice Thomas, writing for the Court, explained that the debtor did not have a right to exempt "more than a small portion of the[ ] proceeds" from the lawsuit on her Schedule C, but she nevertheless "claimed the full amount as exempt" when she listed the value of the lawsuit as "unknown" and the value of her exemption as "unknown." *Id.* at 642, 112 S.Ct. 1644. The Court held

that the trustee could have objected to the exemption under Rule 4003 within the 30-day period and his failure to do so thereby rendered the full amount of the proceeds from the lawsuit exempt. *Id.* at 642, 112 S.Ct. 1644.

The trustee in *Taylor* argued, as does the trustee in our case, that Rule 4003 governs inquiries into the "validity of an exemption" only and does not "preclude judicial inquiry" into valuation. *Id.* at 643, 112 S.Ct. 1644. The Court was unpersuaded, reasoning that

> [d]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality. In this case, despite what respondents repeatedly told him, Taylor did not object to the claimed exemption. *If Taylor did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, or he could have asked the Bankruptcy Court for an extension of time to object.* Having done neither, Taylor cannot now seek to deprive [the debtor] of the exemption.

*Id.* at 644, 112 S.Ct. 1644 (emphasis added) (citations omitted). The trustee further argued that allowing property to become exempt in this manner would create improper incentives for debtors to claim property as exempt in the hope that a trustee would not object and then the full amount of the exemption—beyond what was legally available—could pass through the

bankruptcy estate and be pocketed by the debtor. *Id.* The Court rejected this concern, noting that trustees are already safeguarded from such risks by various provisions of the Bankruptcy Code that penalize debtors for engaging in improper conduct in the course of a bankruptcy. *Id.*[3]

---

3. As the Court explained,

> [d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings. *See, e.g.*, 11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not "well grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases). These provisions may limit bad-faith claims of exemptions by debtors. To the extent that they do not, Congress may enact comparable provisions to address the difficulties that Taylor predicts will follow our decision. We have no authority to limit the application of § 522( *l* ) to exemptions claimed in good faith.

*Taylor*, 503 U.S. at 644-45, 112 S.Ct. 1644.

C.

Schwab and *amicus* National Association of Bankruptcy Trustees contend that *Taylor* is not applicable in our case because Reilly's exemption was not objectionable on its face. According to Schwab, the amount of the exemption that Reilly claimed—$10,718—was proper, which means that, "[a]s opposed to Trustee Taylor, the Trustee here could not have made a valid objection under 11 U.S.C. § 522(*l*) to this exemption. [Schwab] intends to pay [Reilly] her exemption from the proceeds of the business equipment." Schwab's Reply Br. 4. Thus, Schwab argues that *Taylor* " 'simply does not address whether a debtor's valuation of property becomes conclusive in the absence of a timely objection pursuant to 11 U.S.C. § 522(*l*) and Rule 4003(b).' " *Id.*

We disagree, as we believe this case to be controlled by *Taylor*. Just as we perceive it was important to the *Taylor* Court that the debtor meant to exempt the full amount of the property by listing "unknown" as both the value of the property and the value of the exemption, it is important to us that Reilly valued the business equipment at $10,718 and claimed an exemption in the same amount. Such an identical listing put Schwab on notice that Reilly intended to exempt the property fully. At that point, had Schwab doubted Reilly's valuation of her business equipment, he should have had the property appraised and/or sought a hearing pursuant to Rule 4003(c). Alternatively, if he was not able to seek an appraisal within Rule 4003's 30-day time limit, he could have requested an extension before that deadline

passed. But once Rule 4003's 30-day period elapsed without Schwab filing an objection or a request for an extension, the property became fully exempt from the bankruptcy estate regardless of its ultimate market value.

D.

In reaching our holding today, we recognize that there is a split of authority on this issue among courts that have considered it. *Compare Allen v. Green (In re Green)*, 31 F.3d 1098 (11th Cir.1994), *and Olson v. Anderson (In re Anderson)*, 377 B.R. 865 (6th Cir.BAP2007), *with Stoebner v. Wick (In re Wick)*, 276 F.3d 412 (8th Cir.2002), *and Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir.1992). Taking these cases in reverse order, *Hyman*, which was decided just after *Taylor*, involved debtors who had claimed a $45,000 state-law homestead exemption in their house, which was valued at $415,000 and was subject to $347,611 in encumberances. 967 F.2d at 1318. When the trustee moved to sell the house, the debtors claimed that they had exempted the entirety of their house because the trustee had not filed a timely objection to the exemption under Rule 4003. The Court of Appeals for the Ninth Circuit disagreed because the debtors had not signaled their intent to exempt the entirety of the property, but merely $45,000 of the unencumbered property. *Id.* at 1319. *Hyman* is distinguishable from the case before us because the debtor here claimed an exemption in the amount of the entire value of the property. Had Reilly claimed only a $10,000 exemption in property she valued

at $10,718, we might have a case that resembles *Hyman*. But where the debtor indicates her intent to exempt the entirety of the property by listing the value of the property and the value of the exemption as identical, *Taylor* proves more instructive.

*Wick* from the Eighth Circuit provides a closer case. The facts there appear much the same as *Taylor*. The debtor had listed the value of certain stock options as "unknown" and claimed an exemption in an "unknown" amount. 276 B.R. at 414. The trustee did not object, even though the maximum statutory exemption was $3,925. *Id.* at 416. Ultimately, the debtor exercised her stock options and received $97,200, and the trustee sought to compel the turnover of the stock option proceeds less the $3,925 exemption. The debtor relied on *Taylor*, but the Eighth Circuit Court of Appeals found it distinguishable because there was evidence in the record establishing that the debtor in *Wick* only intended to exempt a portion of the stock options, whereas the debtor in *Taylor* intended to exempt the property in full. *Id.* at 416-17. The Court further rejected the debtor's assertion that, as a matter of law, one fully exempts an asset by listing both the value of the stock options and the value of the exemption as "unknown," reasoning that "when a specific dollar figure given by statute limited the amount of the exemption, and the trustee did not forsake an interest in the options [,] . . . listing 'unknown' does not, by itself, render the options fully exempt." *Id.* at 416.

We believe this result to be inconsistent with *Taylor*. Unlike our Eighth Circuit colleagues in *Wick*, we read *Taylor* to mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt.

In contrast to *Hyman* and *Wick*, the Court of Appeals for the Eleventh Circuit and the Bankruptcy Appellate Panel of the Sixth Circuit have reached conclusions similar to ours—namely, that where a debtor shows her intent to exempt the entirety of certain property and the trustee does not object within Rule 4003's time—frame, the asset passes through the bankruptcy estate and becomes fully exempt, even if it is later discovered that the property has a higher value than the exempted amount. In *Green*, the debtor filed a Schedule C claiming her pending lawsuit as exempt. She listed the lawsuit as having a value of $1 and claimed an exemption of $1 as well. 31 F.3d at 1098. The trustee did not object to the exemption, even though he understood that the $1 value did not represent the suit's actual estimated value. When the debtor received a $15,000 settlement from the suit, the trustee sought to have that money become part of the bankruptcy estate. He argued that, because the debtor had only listed a $1 exemption on her Schedule C, the bankruptcy estate was entitled to all proceeds from the lawsuit in excess of the $1 exemption. *Id.* at 1099. The debtor claimed that the trustee's failure to file a timely objection pursuant to

Rule 4003 precluded him from seeking those funds. The Eleventh Circuit Court of Appeals agreed with the debtor. It reasoned that "an unstated premise" of *Taylor* was "that a debtor who exempts the entire reported value of an asset is claiming the 'full amount,' whatever it turns out to be." *Id.* at 1100. The trustee's failure to file a timely objection thus meant that the entire value of the lawsuit was exempt from the bankruptcy estate.

Finally, in *Anderson* the Bankruptcy Appellate Panel of the Sixth Circuit ("B.A.P.") considered a situation where the debtors sought to exempt their 50% interest in a co-owned property. The debtors claimed on their Schedule C that the property was worth $30,000, and thus their 50% interest was $15,000. They claimed an exemption of $15,000. 377 B.R. at 869. Well after Rule 4003's 30-day period had expired, the trustee sought an appraisal of the property and determined it to be worth $60,000. The trustee initiated an adversary proceeding in which she sought to sell the property and recoup for the bankruptcy estate the value of the debtors' 50% share in excess of the $15,000 exemption. The debtors claimed that they had fully exempted their 50% interest in the property, notwithstanding its subsequently appraised value, and the B.A.P. agreed. It read *Taylor* as standing for the principle that, "when a debtor makes an unambiguous manifestation of intent to seek an unlimited exemption in property, . . . absent a timely objection, that property is exempt in its entirety, even if its actual value exceeds statutory limits, and it is no longer property of the estate." *Id.* at 875. In reaching this determination, the B.A.P. noted that the burden for

Rule 4003 objections rests on the trustee, and not the debtor, meaning that any ambiguity should be resolved in the debtor's favor. *Id.* at 876-77.

*Anderson* provides the closest analog to the case before us. In both instances, the debtors signaled their intent to exempt the property in its entirety by claiming an exemption for the full value of the property. Moreover, both trustees could have conducted appraisals of the exempted property within Rule 4003's 30-day period but failed to do so. Both could have asked for more time but did not, and both had the burden to object but did not. Add to these facts the reasoning in *Taylor*, and the result rests in favor of the debtor.

* * * * * * *

It is worth noting that our holding today accords with bankruptcy's promise of a fresh start. Once the period for objection lapses, all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor.[4] The debtor can then use

4. *See* 9 Collier on Bankruptcy ¶ 4003.02[1] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2005) ("Normally, if the debtor lists property as exempt, that listing is interpreted as a claim for exemption of the debtor's entire interest in the property, and the debtor's valuation of that interest is treated as the amount of the exemption claimed. Were it otherwise-that is, if the listing were construed to claim as exempt only that portion of the property having the value stated-the provisions finalizing exemptions if no objections are filed would

(Cont'd)

that property with the knowledge that it is her own and will not be subject to later liquidation for the benefit of creditors. This is not the case where the debtor claims an exemption in an amount less than the value listed on the schedules. In that circumstance, the trustee is entitled to claim for the bankruptcy estate the value of the property in excess of the exemption sought, without the need for a timely objection. *See In re Hyman*, 967 F.2d at 1319. But where the debtor lists a value for the property and claims an exemption in the same amount, the trustee is on notice of the debtor's valuation and has ample time to seek confirmation that the debtor's claimed value represents the true worth of the asset.

Finally, we are mindful of the trustee's concern that our holding today will encourage gamesmanship among crafty debtors who may seek to undervalue their property with the hope of having it bypass the bankruptcy estate. But as *Taylor* reminds us, there are significant protections in place for both the trustee and the bankruptcy estate. *See* 503 U.S. at 644-45, 112 S.Ct. 1644; *supra* note 3. Moreover, on the facts here, there is no reason to suspect bad behavior on the part of the debtor. Indeed, it is quite to the contrary. The kitchen equipment Schwab here seeks to sell has significant sentimental value to Reilly, having been bought for her

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(Cont'd)

be rendered meaningless. The trustee or creditors could always claim that the debtor's interest in the property was greater than the value claimed as exempt and still object to the debtor exempting his or her entire interest in the property after the deadline for objections had passed.").

by her parents. When faced with Schwab's motion to sell, Reilly attempted to have the bankruptcy proceeding dismissed, saying that she would find a way to pay all of her creditors rather than lose the equipment. And, in any event, if Schwab discovered bad faith by Reilly, bankruptcy and criminal law allow recourse.

We thus affirm the judgment of the District Court.

## APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA FILED SEPTEMBER 19, 2006

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT**
**OF PENNSYLVANIA**

**Bankruptcy Appeal**

**No. 3:05cv2489**

**(Judge Munley)**

**IN RE:**

**Nadejda Reilly,**

**Debtor**

---

**WILLIAM G. SCHWAB,**

**Appellant**

**v.**

**NADEJDA REILLY,**

**Appellee**

### MEMORANDUM

Before the court for disposition is the bankruptcy appeal of William G. Schwab, which calls upon us to decide whether a bankruptcy trustee must file timely objections in order to challenge a debtor's estimates as to the value of her property. The matter has been fully

briefed and is ripe for disposition. For the following reasons, the appeal will be denied.

**Background**

Debtor Nadejda Reilly (hereinafter "appellee") filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code on April 21, 2005. (Doc. 2-2, Bankruptcy Petition). When a bankruptcy petition is filed, an estate is created made up of "all legal or equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). A debtor can list certain property interests as exempt from administration by the trustee. *See* 11 U.S.C. § 522(b). A trustee or any party in interest may file objections to the list of exemptions within thirty (30) days of its filing. Fed. R. Bankr. P. 4003(b). If no objection is filed, then the "the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(1).

On Schedule B of her bankruptcy petition, the debtor listed her personal property and its value. She included "business equipment" on the list with a value of $10,718.00. (Doc. 2-2, at 6).[1] On Schedule C of the petition, appellee listed the property that she claimed as exempt from the bankruptcy. (Doc. 2-2, at 10). Included among the claimed exempt property was

---

1. Section 522(*l*) of the Bankruptcy Code provides that a debtor must file a list of property that the debtor claims is exempt from distribution to creditors.

$10,718.00 for the business equipment.[2] The trustee did not file an objection to this exemption.

The trustee claims that an appraisal of the business equipment indicates that it is undervalued by $7,200.00. On August 10, 2005, appellant filed an application to employ an auctioneer and moved to sell the business equipment. The debtor opposed the appellant's filings and took the position that the business equipment was fully exempt and not subject to liquidation.

The Bankruptcy Court held a hearing on October 20, 2005. The Bankruptcy Court determined that the property was fully exempt. The court held that the appellant waived the right to challenge the valuation of the properly by failing to object to the debtor's exemptions in the time permitted by Bankruptcy Rule 4003. It is from this decision that the Bankruptcy Trustee, William G Schwab, appeals.

**Jurisdiction**

We have jurisdiction over the instant bankruptcy appeal pursuant to 28 U.S.C. § 158(a)(1), which provides that the district courts of the United States have jurisdiction to hear appeals from final judgments, orders, and decrees of the bankruptcy courts.

---

2. A portion of this amount, $1,185.00 was claimed exempt under 11 U.S.C. § 522(d)(6), and the remainder, $8,868.00 was claimed exempt under 11 U.S.C. § 522(d)(5).

*Appendix B*

**Standard of review**

This court reviews the bankruptcy court's conclusions of law *de novo*. *In re O'Brien Environmental Energy, Inc.*, 188 F.3d 116, 122 (3d Cir. 1999).

**Discussion**

Appellee asserts that she claimed the equipment at issue as an exemption for its full listed value, and appellant did not file a timely objection to the claimed exemption. Therefore, the equipment is not part of the bankruptcy estate, and the appellant cannot liquidate it to pay creditors. Appellant claims that it did not need to object to the exemption because he is not challenging whether it is a valid exemption or not, he is merely challenging the valuation of the exemption. According to the appellant, it is thus appropriate to liquidate the assets, pay appellee the amount of the exemption and then distribute the remaining money to creditors.

In support of her position, the appellee cites *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). In *Taylor*, the United States Supreme Court considered the issue of whether the trustee must file a timely objection to contest the validity of an exemption where the debtor had no colorable basis for claiming the exemption. *Id.* at 639. In *Taylor*, the debtor listed as exempt property the proceeds of a lawsuit which had not yet been adjudicated. She listed its value as "unknown." *Id.* at 640. The trustee did not object to the claimed exemption. The lawsuit was eventually settled for $110,000. The bankruptcy trustee then demanded that the money be

turned over as property of the bankruptcy estate. *Id.* at 641. The Supreme Court strictly construed the bankruptcy rules and held that the trustee's failure to make a timely objection rendered the property exempt, and the trustee could not challenge the exemption's validity. *Id.* at 643-44.

Appellant asserts that the instant case is distinguishable from *Taylor*. *Taylor* dealt with challenging the validity of the exemption. Appellant's position is that he does not challenge whether the property is exempt or not, rather he challenges the valuation of the property. We do not find such a distinction. In *Taylor*, the debtor exempted the full value of her interest in the lawsuit by listing its value as "unknown." The Court explained that "If [the trustee] did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, *see* Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, *see* Rule 4003(b). Having done neither, [he] cannot now seek to deprive [the debtor] . . . of the exemption." *Id.* at 644. Clearly, therefore, valuation was an issue that the Supreme Court addressed.

In support of his position, the trustee relies upon *In re Wick*, 276 F.3d 412 (8th Cir. 2002). We find *Wick* distinguishable from the instant case. In *Wick*, the debtor listed as an exemption in her Chapter 7 bankruptcy, a stock option. She listed the value of the option as "unknown." *Id.* at 414. After the bankruptcy ended, a state court valued Wick's stock option at $97,200.00. *Id.* The bankruptcy trustee then petitioned

to re-open the bankruptcy case and demanded the $97,2000.00 less the value of the maximum exemption she could take, $3,925.00. *Id.*

The Eighth Circuit approached the issue as whether the debtor had intended to exempt the asset in full or in part as she had listed the value as "unknown." *Id.* at 416. The court concluded that the debtor, her counsel and the trustee all understood that the options were only partially exempted. *Id.* In the instant case, the issue is not whether the debtor intended to fully exempt the asset. She clearly did, the estimated value she provides for the equipment is the totally covered by the exemption she sought. Therefore, the *Wick* court's analysis is inapplicable.

Appellee also asserts that their position is supported by *In re Einkorn*, 330 B.R. 570 (E.D. Mich. 2005). In *Einkorn*, the debtors listed as an exemption claim in their Chapter 7 bankruptcy for a time share in the amount of $1.00. *Id.* at 571. On Schedule A, however, they listed the value of $1,000.00. Therefore, they listed not the entire asset as exempt, but only $1.00 of their interest in it as exempt. *Id.* The court found it proper for the trustee to sell the timeshare and use the proceeds to satisfy a lien on it and to also satisfy the debtor's claimed exemption. Other cases have also turned on the issue of the debtor's intentions. *See, e.g., Hyman v. Plotkin*, 967 F.2d 1316 (9th Cir. 1992).

The instant case is distinguishable. The value listed on Schedule B for the equipment in the instant case is

the same as the exemption, totally exempting the property. No question exists regarding whether the plaintiff sought to exempt the full value of the property.

This case is more directly in line with *Taylor*, where the Court determined that the debtor intended to exempt the full value of the property. The present case is also analogous to the situation in *Allen v. Green*, 31 F.3d 1098 (11th Cir. 1994). In *Allen*, the debtor listed as an exemption a personal injury lawsuit. He claimed a $1.00 exemption for the lawsuit. *Id.* at 1098-99. The trustee did not object. After the lawsuit settled for $15,000.00 the debtor moved to have the entire settlement disbursed to her. Relying upon *Taylor*, the court found that because the trustee failed to timely challenge the entire reported value of the lawsuit – $1.00 – the debtor was entitled to the entire value, whatever it ultimately turned out to be. *Id.* at 1099.

Likewise, in the instant case, the record indicates that the debtor valued the property at issue at $10,718.00, and she exempted this entire amount. As she exempted the entire value, and the trustee never objected, she is entitled to the entire value, even if the trustee asserts it is worth more than she estimated.[3]

Accordingly, the appellant's bankruptcy appeal will be denied. An appropriate order follows.

---

3. We recognize that not all courts have adopted this reasoning. *See, e.g., Addison v. Reavis*, 158 B.R. 53 (E.D.Va. 1993). We agree, however, with the *Allen* court that the interpretation given to *Taylor* in cases taking the opposite view is not correct. *Allen*, 31 F.3d at 1101.

*Appendix B*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT**
**OF PENNSYLVANIA**

**Bankruptcy Appeal**

**No. 3:05cv2489**

**(Judge Munley)**

**IN RE:**

**Nadejda Reilly,**

**Debtor**

---

**WILLIAM G. SCHWAB,**

**Appellant**

**v.**

**NADEJDA REILLY,**

**Appellee**

**ORDER**

**AND NOW**, to wit, this 19th day of September 2006, William G. Schwab's appeal of Chief Bankruptcy Judge John J. Thomas's order of October 20, 2005 is hereby **DENIED**.

**BY THE COURT:**

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

## APPENDIX C — PROCEEDING MEMO/ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA FILED OCTOBER 20, 2005

**IN THE UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF PENNSYLVANIA**
**Wilkes-Barre, PA**

PROCEEDING MEMO/ORDER OF COURT

DEBTOR(S)
*Nadejda Reilly*

CHAPTER: *7*

CASE NO.: *5-05-52187*

HEARING DATE: *10/26/05*

MATTER
*Trustee's Motion to Sell Personal Property at Public Sale*

RECORD ☒

DOCUMENT NO: *18*

Appearance(s) for Plaintiff/Movant
*Zac [illegible]*

Appearance(s) for Defendant/Respondent
*Gino L. Andreuzzi, Esq.*

*Appendix C*

DECISION: *DENIED*

*Findings and conclusions dictated at close of hearing incorporated by reference.*

OTHER: *Property [illegible]*

Dated: *10/20/05*

IT IS SO ORDERED

s/ John J. Thomas
JOHN J. THOMAS, Bankruptcy Judge

Mailing Required X

# OPPOSITION BRIEF

23

(3)

U.S.
FILED
NOV 26 2008
OFFICE OF THE CLERK

No. 08-538

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB,

*Petitioner*,

v.

NADEJDA REILLY,

*Respondent*.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## BRIEF IN OPPOSITION

Gino L. Andreuzzi
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
DECHERT LLP
90 State House Square
Hartford, Connecticut 06103
(860) 524-3999

*Counsel for Respondent*

## QUESTIONS PRESENTED

The Third Circuit affirmed the United States District Court for the Middle District of Pennsylvania, which held that when a debtor lists the value of an asset on the appropriate bankruptcy schedule and then exempts an identical value for that asset on her claim of exemptions, a Chapter 7 Trustee must object to the debtor's claim of exempt property within thirty days or the asset is completely exempt from the bankruptcy estate.

Petitioner presents the following three questions:

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the 30-day period of Rule 4003, even though the amount claimed as ex-

empt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress's exclusive power to legislate in the field of bankruptcy when it created new trustee duties and when it created unlimited "in kind" exemptions where the statute contains specific dollar-value limitations?

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## PRELIMINARY STATEMENT

This matter arises out of the chapter 7 bankruptcy case of respondent Nadejda Reilly ("Reilly"). Petitioner William G. Schwab ("Schwab") is the chapter 7 trustee in Reilly's case.

At the outset of her bankruptcy case, Reilly exempted certain business equipment of both sentimental and practical value from her bankruptcy estate. In the decision below, the Third Circuit held that both the district court and the bankruptcy court had correctly concluded that Reilly properly and completely exempted her business equipment from her bankruptcy estate by listing exemption amounts for her business equipment that were identical to the values she placed on those assets in her bankruptcy schedules. Based on its review of the record, the court of appeals determined correctly that the facts demonstrated that Reilly had expressed her intent to exempt the entirety of her listed business equipment, and accordingly, Schwab's failure to object to Reilly's exemptions within the 30-day exemption period operated to exempt all of Reilly's business equipment from the reach of the bankruptcy estate.

The decision of the Third Circuit provides no occasion for certiorari review. Contrary to Schwab's contentions, the decision below is fully consistent with the applicable precedent of this Court. In addition, to the extent there is a conflict between the decision below and the decisions of other courts of appeals, it is a shallow one. Further, despite some differences in the approaches taken by different courts of appeals, the result in this case would be the same under any of their respective approaches. Accordingly, this case does not present an appropriate vehicle for review in this Court, and certiorari should be denied.

## STATEMENT

### A. Background

Reilly, a cook with a one-person catering business, filed her Chapter 7 bankruptcy petition and related schedules on April 21, 2005. Pet. App. 2a. On her Schedule B list of personal property, she included various specific, individually priced pieces of business equipment, estimating a combined value of $10,718. On her Schedule C, which claimed her exemptions, she utilized two exemption provisions provided in the Bankruptcy Code to exempt the business equipment listed on her Schedule B in the full amount of $10,718. The exemption of the listed

equipment was of particular importance to Reilly in light of the "significant sentimental value" she attached to the equipment by virtue of the fact that her parents had purchased it for her. Pet. App. 17a-18a.

Thereafter, Schwab "made arrangements to have the inventoried items appraised on his own." Resp. App. 2a. Schwab then presided over a Section 341(a) meeting of creditors, which was completed on June 22, 2005, triggering the 30-day deadline set forth in Bankruptcy Rule 4003(b) for filing objections to Reilly's claim of exemptions. At the meeting of the creditors, Schwab "announced to the debtor at the meeting that his appraised value exceeded the value of the debtor by approximately, $7,200.00."[1] *Id.*

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[1] The hearing transcript on Schwab's motion to sell Reilly's exempt business equipment indicates that, according to the attorney for the trustee, "at the meeting of creditors, the Trustee did indicate that the value of the property was in excess of debtor's values." Resp. App. 4a. The attorney for Reilly indicated at that proceeding that "prior to the first meeting of creditors, the Trustee, on its own initiative, sent an appraiser out to examine and appraise the property. And at the time of the meeting he had higher valuations. He indicated verbally that his valuation was 17,000 – approximately $17,333." Resp. App. 6a. Schwab's attorney did not object to that characterization of the events, and to this day Schwab has not

In fact, Schwab indicated verbally to Reilly that "he desired to have an auction to generate funds for unsecured creditors in the case." Resp. App. 2a, 9a, 12a. Despite Schwab's statements to Reilly and her counsel, no parties filed objections within the 30-day period following the meeting of the creditors, thereby rendering Reilly's business equipment exempt from her bankruptcy estate.

Despite the passing of the 30-day objection period, on August 10, 2005, Schwab sought approval from the bankruptcy court to sell Reilly's business equipment. As the Third Circuit noted in its opinion below, "[w]hen faced with Schwab's motion to sell, Reilly attempted to have the bankruptcy proceeding dismissed, saying that she would find a way to pay all of her creditors rather than lose the equipment." Pet. App. 18a. In addition to filing a motion to dismiss her bankruptcy proceeding, Reilly further demonstrated her disagreement with Schwab's assertion that the property was includable in the bankruptcy estate by objecting to the motion to sell, arguing that her business equipment

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contested that characterization despite Reilly's repeated description of those events in her briefs at all levels of appeal. *See* Resp. App. 2a, 9a-10a, 12a.

was exempt from the reach of the bankruptcy estate. Pet. App. 21a.

The bankruptcy court subsequently denied both Reilly's motion to dismiss and Schwab's motion to sell on the ground that the business equipment was fully exempt because Schwab failed to file an objection to Reilly's exemptions within the 30-day objection period prescribed by Bankruptcy Rule 4003(b).

**B. Decisions Below**

Schwab appealed the bankruptcy court's decision to the United States District Court for the Middle District of Pennsylvania. The district court affirmed the bankruptcy court, explaining that Reilly's use of identical values on her list of business equipment assets and exemptions resulted in the exemption of the entire amount of the business equipment in the absence of any objection within the 30-day period.

Schwab then appealed the district court's decision to the Third Circuit, which affirmed. The Third Circuit held that a debtor is entitled to full exemption of the property where "the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemp-

tion of its full value and the trustee does not object in a timely manner." Pet. App. 1a-2a.

## REASONS FOR DENYING THE PETITION

Schwab contests the Third Circuit's conclusion that where "the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemption of its full value and the trustee does not object in a timely manner...the debtor is entitled to the property in its entirety." Pet. App. 1a-2a. In support of his argument, Schwab asserts that (i) the Third Circuit's holding will place an additional strain on bankruptcy trustees in the form of unnecessary objections to exemptions and requests for extensions; (ii) a debtor's exemption claim of the full value of a given property will provide insufficient notice to a trustee that an objection is warranted; and (iii) the Third Circuit's decision unconstitutionally usurps the power of Congress to legislate exclusively in the field of bankruptcy by creating new duties for trustees and unlimited exemptions for debtors. Pet. 5, 25. Schwab contends that the decision misreads and overapplies this Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), and also conflicts with the decision of the Eighth Circuit in *Stoebner v. Wick (In re Wick)*, 276 F.3d 412 (8th Cir. 2002) and the decision of the Ninth Circuit

in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992). Pet. 5-14.

These assertions are unsound. First, Schwab's argument that the Third Circuit's decision will place an additional strain on bankruptcy trustees is not supported by the facts of this case. Here, as noted above, Schwab was not only able to obtain an appraisal of the exempted items within the 30-day objection period, but Schwab was actually able to obtain the appraisal *before* the creditors meeting that triggered the 30-day objection period. Furthermore, this Court has already explained that the appropriate action to be undertaken by a trustee where the trustee does not know the value of the exempted assets at issue is to either seek a hearing on the issue or ask the bankruptcy court for an extension of time to object. *Taylor*, 503 U.S. at 644. It can hardly be said, in light of the facts of this case, that any additional burden on the trustee imposed by this Court's decision in *Taylor* is insurmountable.

Second, Schwab's assertion that Reilly's claim of the full value of her property provides insufficient notice to a trustee to object is unpersuasive. Not only will an identical value exemption claim provide sufficient notice to a trustee of the debtor's intent to exempt the entire

asset,[2] the record in this case demonstrates that such an exemption in fact provided sufficient notice: Schwab was fully aware that the value of the business equipment may not have actually been $10,718. As noted above, Reilly's listing of identical values on her bankruptcy schedules prompted Schwab to obtain a preliminary appraisal of the property prior to the meeting of the creditors. Indeed, at the creditors meeting, Schwab actually indicated his intent to proceed with a sale of the property. It is unclear why Schwab then elected not to object to the claimed exemptions, in light of his concerns as to their value, but the fact remains that he did not object. In light of these facts, any circuit court deciding the case would reach the same outcome.

Finally, Schwab's argument alleging unconstitutionality is misplaced. Schwab contends that the Third Circuit's opinion unconstitution-

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[2] Indeed, the leading bankruptcy treatise provides the following guidance: "Normally, if a debtor lists an asset as having a particular value in the schedules and then exempts that value, the schedules should be read as a claim of exemption for the entire asset, to which the trustee should object if the trustee believes the asset has been undervalued." 4 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 522.05[2][b] (15th rev. ed. 2007).

ally infringes upon the exclusive power of Congress, but its decision is based upon and follows the reasoning of this Court's decision in *Taylor*. Furthermore, the Third Circuit's decision does not increase the duties of the trustee or enlarge the exemptions available to the debtor under *Taylor*. In any event, the Third Circuit cannot properly be accused of legislating in a non-uniform way due to purportedly conflicting decisions by *other* courts in *other* circuits.

The Third Circuit properly concluded that Schwab's failure to object to Reilly's claim for exemptions within the 30-day objection period provided for by Rule 4003(b) operated to fully exempt Reilly's exemption claim for her business equipment. Accordingly, the Third Circuit correctly denied Schwab's motion to proceed with a sale of that property.

The decision of the Third Circuit is also consistent with this Court's decision in *Taylor* and with the decision of the Sixth Circuit's bankruptcy appellate panel in *Olson v. Anderson (In re Anderson)*, 377 B.R. 865 (B.A.P. 6th Cir. 2007) and the decision of the Eleventh Circuit in *Allen v. Green (In re Green)*, 31 F.3d 1098 (11th Cir. 1994). Moreover, to the extent that some aspects of the Third Circuit's analysis diverge from aspects of decisions from other circuits,

this case neither requires nor presents the appropriate vehicle for the Court's intervention, as there is no basis upon which to conclude that those decisions would trigger a different result. Indeed, review of those decisions demonstrates that the outcome would likely be the same.

## A. The Writ Should Be Denied Because the Decision Below Comports with this Court's Precedent.

Schwab claims that the Third Circuit's analysis "perpetuates a mis-reading and over-application" of *Taylor*. Pet. 5. It is Schwab's analysis, however, that is in error, as the decision below is fully consistent with *Taylor*.

In *Taylor*, the debtor had a pending employment discrimination claim on appeal when she filed her bankruptcy petition. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 640 (1992). The debtor's schedule filed with the bankruptcy court listed the money she expected to win in her discrimination suit as exempt property. She described the property as "Proceeds from lawsuit – [Davis] v. TWA" and "Claim for lost wages" with a listed value of "unknown." *Id.* Subsequently, the trustee held the required initial meeting of the creditors. At that meeting, the respondents told the trustee that the esti-

mated value of the debtor's lawsuit was potentially as high as $90,000. *Id.* After the meeting, the trustee wrote a letter to the respondents, indicating that he considered the eventual lawsuit proceeds to be property of the debtor's estate and seeking additional information about the suit. *Id.* The respondents provided the requested information, but the trustee elected not to object to the claimed exemption because he doubted the listed value of the lawsuit. *Id.* at 640-41.

When a subsequent settlement of the case resulted in a substantial sum of money, the trustee demanded its return from the respondents. *Id.* at 641. The respondents argued, however, that the proceeds from the lawsuit were exempt because the debtor had claimed them as exempt. *Id.* The bankruptcy court ruled in favor of the trustee, holding that the debtor "had 'no statutory basis' for claiming the proceeds of the lawsuit as exempt and ordered respondents to 'return' approximately $23,000 to Taylor, a sum sufficient to pay off all of [the debtor's] unpaid creditors." *Id.* On appeal, the district court affirmed the bankruptcy court's decision. *Id.*

The Third Circuit reversed, concluding that the respondents were not required to turn over the proceeds of the lawsuit because the debtor

had claimed them as exempt and the trustee "had failed to object to the claimed exemption in a timely manner." *Id.* at 641-42.

This Court framed the issue presented in *Taylor* as follows: "whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable basis for claiming the exemption." *Id.* at 639. Focusing its analysis on the text of Section 522(l) and Rule 4003(b), the Court reasoned:

> [The debtor] claimed the lawsuit proceeds as exempt on a list filed with the Bankruptcy Court. Section 522(l), to repeat, says that "unless a party in interest objects, the property claimed as exempt on such list is exempt." Rule 4003(b) gives the trustee and creditors 30 days from the initial creditors' meeting to object. By negative implication, the Rule indicates that creditors may not object after thirty days "unless, within such period, further time is granted by the court." The Bankruptcy Court did not extend the 30-day period. Section 522(l) therefore has made the property exempt. [The trustee] cannot contest the ex-

> emption at this time whether or not [the debtor] had a colorable statutory basis for claiming it.

*Id.* at 643-44. The Court went on to hold that if the trustee "did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, *see* Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, *see* Rule 4003(b). Having done neither, [the trustee] cannot now seek to deprive [the debtor] and respondents of the exemption." *Id.* at 644.

### 1. The Decision Below Is Fully Consistent with *Taylor*.

The petition incorrectly asserts that the Third Circuit erred by relying on *Taylor* to hold that Reilly's business equipment was exempt because Reilly did not seek to exempt a value of either "unknown" or "any amount to indicate that the value was contingent." Pet. 12-13. Indeed, Schwab's attempt to distinguish *Taylor* from this case rests entirely on this single distinction. A closer look at this Court's decision in *Taylor* demonstrates that this distinction makes no difference.

There is no basis on which to conclude that the holding of *Taylor* is limited to instances where the debtor lists a value for its exemption that indicates the value of the asset is contingent. *Taylor* addressed more broadly the requirement that the trustee must object to any exemption by the debtor within the 30-day objection period provided by Rule 4003(b). The crucial fact in *Taylor*, for the purposes of the decision below, is that the asset was listed on Reilly's schedule of exemptions and that the amounts for the value of the asset and the exemption were identical.

The decision below does not violate the holding of *Taylor*. The Third Circuit found that Reilly had properly listed her exemption in the business equipment, and that she indicated her intent to fully exempt the applicable property by using identical values for both the asset list and exemption amount. Pet. App. 11a.

Schwab contends that Reilly should have indicated her intent to exempt the asset in full by listing "unknown" or "$1 or any amount to indicate that the value was contingent." Pet. 13. Schwab's argument fails to address the fact that the value of Reilly's business equipment was not contingent at all. Reilly ascertained what she

believed to be the proper value for the business equipment and listed that value.

Indeed, the value Reilly provided as the amount of her exemption was neither arbitrary nor the product of bad faith, as the exemption amount Reilly claimed for the business equipment did not exhaust the remaining amount of exemptions available to her under Section 522(d)(5). *See* Resp. App. 10a. Rather, Reilly applied the remaining $1,328 of her available business exemption to exempt some, but not all, of the perishable food items in her possession. *Id.* Reilly thought she knew the value of the items she sought to exempt, and accordingly, she listed and sought to exempt their full value in good faith. Had Reilly been acting in bad faith, she would have ensured that all of the perishable food items were covered by the exemption amount as well. If she had known that her intent to exempt the full amount of her business equipment would be frustrated by Schwab, she would have used the remaining $1,328 to exempt a greater amount of the business equipment. In either event, a simple objection by Schwab or a hearing would have easily resolved any issues.

Schwab's contention that Reilly should have listed a value of "unknown" and sought to ex-

empt the same amount is further undercut by Schwab's simultaneous heavy reliance on the *Wick* decision that specifically found that the designation "unknown" was insufficient to demonstrate the requisite intent. *Stoebner v. Wick (In re Wick)*, 276 F.3d 412, 416 (8th Cir. 2002). Schwab ultimately seeks to nullify this Court's decision in *Taylor* and the force of Rule 4003(b) by presenting a moving target for Reilly to claim her exemptions.

Contrary to Schwab's argument, this Court's decision in *Taylor* did *not* hold that a debtor must list a contingent amount on its list of exemptions in order for the 30-day objection period of Rule 4003(b) to bar the trustee's later actions against the exempted property. The Third Circuit therefore properly construed this Court's decision in *Taylor* to require a trustee to object to a debtor's claim of exemption within thirty days from the meeting of the creditors where the debtor has indicated its intent to exempt the full amount of its property by listing an equal value for both the asset and the amount of the asset exempted. Accordingly, the Third Circuit's decision in this case is in accord with this Court's prior precedent and provides no basis for certiorari review.

### 2. Any Burden Imposed on the Trustee by the Decision Below Is Fully Consistent with *Taylor*.

Schwab argues that the decision below places an additional strain on the bankruptcy trustee in the form of unnecessary objections to exemptions and requests for exemptions. Schwab's argument is unsupported by the underlying facts of this case and a proper reading of this Court's decision in *Taylor*.

As noted above, in this case, Schwab was able to obtain an appraisal of the items claimed by Reilly on her schedule of exemptions *before* the meeting of the creditors that triggered the 30-day objection period under Rule 4003(b). Once such an appraisal is obtained, a diligent trustee can promptly object to the claimed exemption on the basis of its valuation, or seek a hearing on the issue. In the event the trustee has insufficient time to ascertain whether to object to a claim of exemption, the trustee can seek an extension of the 30-day period from the court. In this case, Schwab was able to obtain the necessary information before the 30-day objection period even *began*. It appears highly unlikely that any other trustee would not be able to obtain the necessary appraisals within the 30-day objection period, and even if they were unable to

do so, they could simply request an extension from the court for additional time to do so. Schwab's actions in this case demonstrate that any additional burden created by the need to object to identical value exemptions is minimal at best.

Additionally, Schwab misdirects this criticism to the decision below. In actuality, any additional burden imposed on trustees to object under Rule 4003(b) was imposed by this Court in *Taylor*, not by the Third Circuit. As noted above, this Court explained that Rule 4003(b) prevents trustees from objecting to claimed exemptions after thirty days from the meeting of creditors unless the court grants an extension. *Taylor*, 503 U.S. at 643-44. This Court explained in *Taylor* that if the trustee does not know the value of the claimed asset, he could seek a hearing on the issue of valuation or ask the Bankruptcy Court for an extension of time to object. *Id.* at 644. The decision below merely complies with this Court's directive in *Taylor*.[3]

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[3] Schwab's contention that a trustee would potentially face sanctions for an improper objection is likewise unpersuasive. Pet. 24. A trustee faced with a valuation issue can seek a hearing on the issue, citing this Court's decision in *Taylor* as support for the trustee's desire to make absolutely clear what is being claimed exempt. It

### B. The Writ Should Be Denied Because the Decision Below Presents Only a Shallow Conflict with Decisions of the Other Circuit Courts that Have Addressed this Issue, and to the Extent that There Is any Disagreement, this Case Neither Requires nor Presents the Appropriate Vehicle for the Court's Intervention as the Result Would Be the Same Under the Cases Cited by Petitioner.

Schwab contends that: "The Third Circuit's holding conflicts in various respects with two other circuit court opinions, as conceded by the Third Circuit." Pet. 5. He specifically contends that the decision below conflicts with the decision of the Ninth Circuit in *Hyman*, and the decision of the Eighth Circuit in *Wick*. Neither of these asserted "conflicts" warrants certiorari review of this case.

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is highly unlikely that any court would find such a request for hearing or even an objection to an exemption on the basis of valuation sanctionable. This is particularly so, in light of the fact that Collier on Bankruptcy counsels a trustee to take this very approach. *See supra* note 2, and accompanying text.

### 1. The Conflict Between the Courts of Appeals, to the Extent One Exists, Is Shallow.

This Court's decision in *Taylor* adopts a plain meaning approach to the interpretation of Section 522(l) and Rule 4003(b), which directs courts to simply read the debtor's schedules to find listed exemptions, and if no objection is made within thirty days from the meeting of the creditors, to find whatever is listed on the debtor's schedules as exempt. *Taylor*, 503 U.S. at 643-44. However, where a debtor has exhibited some indications of fraudulent conduct, some circuit courts have declined to follow this rule strictly. Instead, they have pursued another approach that looks beyond the schedules to determine the debtor's underlying intent. With respect to this case, however, certiorari is not warranted because Reilly would succeed in exempting her assets under either approach.

The only real difference between the positions taken by the courts of appeals is the placement of the burden of demonstrating intent and the method employed to ascertain the debtor's intent regarding what she sought to exempt. The Sixth and Eleventh Circuits join the Third Circuit in strictly following the rule in *Taylor*, determining that where the debtor ex-

empts an identical amount as the value listed for a given asset, the debtor has elected to exempt the entire value of the asset. The Eighth and Ninth Circuits have declined to follow this rule, instead electing to look beyond the schedules to ascertain the intent of the debtor. These differences are insufficient to warrant certiorari in this case.

Reilly's exemption claims would clearly be considered exempt if considered by the Sixth, Eleventh, or Third Circuits. The Eighth and Ninth Circuits employ a somewhat different standard that involves testing the debtor's intent and ultimately shifting the burden of demonstrating that intent on the debtor. This burden-shifting appears to be contrary to *Taylor* and outside the scope of Rule 4003. Nevertheless, even under the more stringent approach adopted by these courts, Reilly would still prevail on her claim of exemption. Accordingly, certiorari is not warranted in this case.

### 2. The Decision Below Is Consistent with the Eleventh Circuit's decision in *Green* and the Sixth Circuit Bankruptcy Appellate Panel's Decision in *Anderson*.

In *Green*, the debtor reported a "lawsuit from auto accident" on her schedules with a value of one dollar. *Allen v. Green (In re Green)*, 31 F.3d 1098, 1098 (11th Cir. 1994). On her exemption schedule, the debtor likewise listed the "value claimed exempt" as one dollar. *Id.* Subsequently, the debtor's personal injury action was settled for $15,000. *Id.* at 1099. When the debtor sought the entire settlement, the bankruptcy court summarily dismissed her motion. *Id.* The district court reversed on appeal, holding that the debtor "had exempted the entire lawsuit, not just one dollar of its value." *Id.*

The Eleventh Circuit explained that "an unstated premise of the Court's holding [in *Taylor*] was that a debtor who exempts the entire reported value of an asset is claiming the 'full amount,' whatever it turns out to be." *Id.* at 1100. Ultimately, the Eleventh Circuit decided that because the debtor had "exempted the full value of her lawsuit, and because the Trustee did not object to her claim, she is entitled to the entire settlement fund." *Id.* at 1101. This re-

sult clearly accords with the Third Circuit's decision below.

Notably, the Eleventh Circuit considered the argument presented by the trustee that the Eleventh Circuit's holding would "force interested parties to make numerous, sometimes needless, objections in order to establish the value of contingent assets." *Id.* The Eleventh Circuit explained that "[i]f that is so, responsibility for that result rests with Congress and the Supreme Court." *Id.*

In the *Anderson* case, the debtors listed their undivided one-half interest in an old cabin on their schedule of assets, claiming the cabin had an approximate value of $30,000, and therefore "[t]he debtors' interest would be $15,000." *Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 869 (B.A.P. 6th Cir. 2007). Additionally, the debtors listed an exemption for their interest in the cabin in an identical amount of $15,000. *Id.* The trustee never objected to the debtors' exemption claim. *Id.*

Almost a year later, the trustee obtained a drive-by appraisal of the property, which provided an estimated value for the cabin of $60,000. *Id.* In light of the appraisal, the trus-

tee filed an adversary proceeding against the debtors, seeking to sell the property. *Id.*

In deciding the case, the Sixth Circuit bankruptcy appellate panel in *Anderson* explained that "[t]he *Taylor* decision is clear that when a debtor makes an unambiguous manifestation of intent to seek an unlimited exemption in property, then, absent a timely objection, that property is exempt in its entirety, even if its actual value exceeds statutory limits, and it is no longer property of the estate." *Id.* at 875. The court then focused the issue on "what constitutes such an intent." *Id.* The court noted that the bankruptcy s hedules themselves do not actually alert the debtor as to the proper way to assert an "in-kind" exemption. *Id.* Ultimately, the court joined the position taken by the Third Circuit in the case below, stating: "[W]e are persuaded generally that a debtor's listing of an exemption in an amount sufficient to exempt all of the available (i.e., unencumbered) value in the property indicates his or her intent to exempt the property in full." *Id.* at 876.

The bankruptcy appellate panel in *Anderson* agreed with the Eleventh Circuit that an unstated premise of *Taylor* "was that a debtor who exempts the entire reported value of an asset is claiming the 'full amount' whatever it turns out

to be." *Id.* (quoting *Green*, 31 F.3d at 1100). Indeed, "[a] contrary ruling would reverse the burden of proof placed on an objecting party to challenge the propriety of an exemption in Rule 4003(c) and render the 30-day objection period meaningless." *Id.* The court further noted that trustees who are uncertain about a given exemption may seek a hearing on the issue or request an extension to object. *Id.* Schwab takes issue with this comment in *Anderson*, questioning how a trustee is supposed to accomplish this, but, as noted above, this Court provided the method in the *Taylor* decision.

Additionally, the Sixth Circuit bankruptcy appellate panel in *Anderson* examined the *Wick* and *Hyman* cases. The bankruptcy appellate panel in *Anderson* distinguished *Hyman* on the grounds that "the debtors in *Hyman* did not exempt all of the unencumbered value in the property." *Id.* With respect to *Wick*, the bankruptcy appellate panel explained that "[n]otwithstanding the similarity with *Taylor*, the court limited the debtor's exemption to $3,925, looking behind the language used by the debtor in her schedules to determine her intent." *Id.* at 876-77. The bankruptcy appellate panel further explained that the Eighth Circuit concluded that "all of the parties understood that the options were only partially exempt" and

therefore found *Taylor* inapplicable. *Id.* at 877. Importantly, the bankruptcy appellate panel noted the potential area of disagreement between the circuits as the suggestion in *Wick* that "any ambiguity should be resolved against the debtor." *Id.* The bankruptcy appellate panel in *Anderson* rejected the Eighth Circuit's burden-shifting approach, but it is important to note that in this case, the factual circumstances surrounding Reilly's claim of exemption would satisfy even the increased burden of the Eighth Circuit's test.

Reilly clearly exempted an identical value as that listed for the asset, and she also would not accept a reduction in the amount of recovery in subsequent discussions with the trustee. On the contrary, as the Third Circuit noted, when faced with the potential sale of her business equipment, Reilly sought to dismiss her bankruptcy case altogether and subject herself to paying the full amounts to her creditors if that was what was necessary to save the business equipment her parents had purchased for her. Pet. App. 17a-18a.

### 3. The Decision Below Does Not Conflict with the Ninth Circuit's Decision in *Hyman* or the Eighth Circuit's Decision in *Wick* to the Extent that Petitioner Presents, and the Result in this Case Would Be the Same Under Either *Hyman* or *Wick*.

Schwab cites *Hyman* as evidence of a circuit split meriting review. As the Third Circuit noted, however, there are important differences between the facts of this case and *Hyman*. Pet. App. 12a-13a. As a threshold matter, it is important to note that, as the Ninth Circuit noted, the *Hyman* case "turns largely on the proper interpretation of California's homestead exemption statute." *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1318 (9th Cir. 1992). The focus in *Hyman* was not on the exemption objection issue at bar.

In *Hyman*, the Ninth Circuit declined to exempt the value of the debtors' home where they listed an exemption amount of $45,000 that was less than the equity available in their home. *See id.* at 1320-21. The Third Circuit recognized this distinction, explaining that "*Hyman* is distinguishable from the case before [it] because [Reilly] claimed an exemption in the amount of the entire value of the property." Pet. App. 12a.

This distinction is critical because, as the Ninth Circuit court noted, the debtors in *Hyman* "did not sufficiently notify others that they were claiming their entire homestead as exempt property; their schedule only gave notice that they claimed $45,000 as exempt." *Hyman*, 967 F.2d at 1319. In this case, however, Reilly's listing of an identical value for both her business equipment assets and the exemption amount indicated the intent necessary to put the trustee on notice to object.

It is true that the Ninth Circuit's approach differed from that taken by the Third Circuit in shifting the burden from the trustee to the debtor with respect to any ambiguity in the debtor's schedules. *See id.* This distinction does not merit certiorari review, however, as it would *not* dictate a different outcome in this case. Ultimately, the Ninth Circuit considered the underlying factual circumstances to ascertain the debtors' intent with respect to their claim of exemptions. On the facts of this case, Reilly would satisfy the Ninth Circuit's shifted burden of proof, inasmuch as the record demonstrates that Schwab was aware of a potential valuation issue prior to the meeting of the creditors and still failed to object within the 30-day objection period. Additionally, the immediate and extreme nature of Reilly's response to Schwab's later mo-

tion to sell (i.e., seeking dismissal of her entire bankruptcy case to save the business equipment purchased by her parents) demonstrated a clear intent to exempt the assets in full.

The Eighth Circuit in *Wick* considered a case where the debtor had listed stock options and, using the federal "wild card" or "catchall" exception, listed the current market value of the options as "unknown" and the value of the claimed exemption as "unknown." *Stoebner v. Wick (In re Wick)*, 276 F.3d 412, 414 (8th Cir. 2002). At the meeting of the creditors in that case, the trustee requested and received a copy of the employment agreement from the debtor that described the options. *Id.* The trustee never objected to the exemption, but eight months after the debtor received her discharge, the trustee wrote to her asking if she was still employed with the company associated with the stock options. *Id.* The debtor responded that she was no longer employed with the company, but that she had attempted to exercise her options and been denied. *Id.* As the Eighth Circuit noted, "[h]er veracity was later questioned by the trustee and the Bankruptcy Court," and while she "may not have lied to the trustee in her letter, she was not entirely candid and never informed him of the changed circumstances." *Id.*

When the debtor's stock options later turned out to have a value of $97,200, the trustee sought to re-open the bankruptcy case and demanded the $97,200 minus the $3,925 exemption that remained available to the debtor. *Id.*

In deciding the case, the Eighth Circuit was not content to simply look at the debtor's schedules to determine her intent to exempt a particular piece of property in full, but instead looked at the underlying factual circumstances surrounding the debtor's claim of exemption. The court noted that "[t]he facts suggest that [the debtor], her counsel, and the trustee understood that the options were only partially exempt." *Id.* at 416. The Eighth Circuit reached this conclusion by examining the interactions between the debtor and the trustee when the trustee sought to obtain the value of the stock options for the bankruptcy estate. As noted above, when questioned about the options by the trustee following the conclusion of the debtor's bankruptcy, the debtor was not entirely truthful, but nevertheless "did not question the trustee's follow-up on the options." *Id.* Additionally, the Eighth Circuit noted that the debtor's counsel "acknowledged in a July 22, 1999 letter to the trustee that the estate had at least some, if a minimal interest, in the options." *Id.*

As part of its refusal to look solely at the debtor's schedules to ascertain her intent, the court also rejected the "contention that listing 'unknown' as the current market value of the exemptions is sufficient as a matter of law to make an asset fully exempt." *Id.* Given the facts and holding of *Taylor*, such a position appears contrary to prior precedent of this Court, but ultimately does *not* require a different result in this case.

The Eighth Circuit attempted to distinguish its facts from *Taylor* on the basis that in the case before it, the debtor "listed a valid statutory basis for her asset" and had exemption value left to partially exempt the asset. *Id.* at 417. As a result, the Eighth Circuit held that the bankruptcy court had correctly determined that the trustee had no basis to object to the claimed exemption. *Id.*

Looking beyond the debtor's schedules, the Eighth Circuit determined that "the asset was only partially exempted," and the Bankruptcy Code and Rules did not oblige a trustee to object "every time a debtor partially exempts an asset." *Id.* The facts used by the Eighth Circuit to distinguish *Taylor* appear at odds with the actual facts of *Taylor*; however, this does not affect how the Eighth Circuit would decide this case.

Indeed, the Eighth Circuit acknowledged that the debtor in *Taylor* "did not have a right to exempt more than a small portion of the asset." *Id.* The Eighth Circuit reasoned that the Supreme Court in *Taylor* noted that the trustee in that case could have made a valid objection if he had acted promptly, and without anything further decided that the case before it was distinguishable. *See id.*

*Taylor* held that the debtor's listing of "unknown" as both the asset value and exemption amount indicated an intent to fully exempt the asset, despite the fact that the debtor only had a statutory basis to *partially* exempt the asset. When describing the facts of *Taylor*, the Eighth Circuit explained that "[t]he trustee did not object, despite the fact that the debtor had only a small exemption amount available and *was claiming the entire asset exempt.*" *Id.* at 417 (emphasis added). The Eighth Circuit held that the designation of "unknown" was sufficient to demonstrate an intent to exempt an entire asset in *Taylor*, but not in *Wick*. Looking to the underlying facts in *Taylor*, it appears the key distinction for the Eighth Circuit was that in *Taylor*, when the trustee sought the proceeds from the discrimination lawsuit, the respondents immediately objected and "argued that they could keep the fees because [the debtor] had

claimed the proceeds of the lawsuit as exempt." *Taylor*, 503 U.S. at 641.

In this case, Reilly listed an identical amount for both the asset value and exemption amount of the business equipment she sought to exempt. As noted above, the record indicates that the trustee then obtained an appraisal of the relevant items, and challenged the debtor's valuation verbally at the meeting of the creditors. Despite the trustee's knowledge and discussion with the debtor, the trustee failed to object to the claim of exemption or request additional time within the 30-day period required by Rule 4003(b). When the trustee later sought to sell the property, Reilly was so steadfastly opposed to the notion of losing the business equipment her parents had purchased for her that she sought dismissal of her bankruptcy case in order to save the items of sentimental value. Pet. App. 17a-18a. Unlike *Wick*, where the debtor was responsive to the trustee's later requests for information about the options and her counsel conceded that at least some of the relevant property was still property of the estate, Reilly was consistent in her stance that the property was properly exempted from the estate *in full*. Accordingly, even under *Wick*'s analysis of intent, which considers the actions of the parties to ascertain whether they attempted to partially

exempt the claimed property, the outcome in this case would be the same.

### 4. The Decision Below Does Not Conflict with the First Circuit's Recent Decision in *Barroso-Herrans*, and the Result Below Would Have Been the Same Under the First Circuit's Analysis.

The First Circuit recently addressed the issue presented in *Barroso-Herrans v. Lugo-Mender (In re Barroso-Herrans)*, 524 F.3d 341 (1st Cir. 2008). In that case, the debtors had two lawsuits pending that sought over four million dollars for various alleged damages. *Id.* at 343. On their list of assets, the debtors included two accounts receivable from the defendant in the pending lawsuits, and listed their values at $102,843.21 and $67,608.98. *Id.* Additionally, the debtors listed the two pending lawsuits as assets, each with a value of $4,000. *Id.* As the *Barroso-Herrans* court explained, "[t]he suits included but were not limited to collection of the accounts receivable." *Id.* On the list of exempt assets, the debtors claimed the two lawsuits, listing a value of $4,000 for each. *Id.* During the meeting of the creditors, the trustee was given copies of the complaints in the two pending lawsuits, but ultimately, the trustee did not

object to the claimed exemptions for the two lawsuits. *Id.*

A little over a year later, the trustee requested that the bankruptcy court authorize an agreement reached with the debtors and their counsel, which included an equal split between the debtors and the bankruptcy estate of the proceeds of the suits. *Id.* After the bankruptcy court refused to commit to a particular distribution of the proceeds from the suits, the counsel for the debtors withdrew, and the debtors refused to cooperate with the trustee. *Id.* Over five months later, the debtors first asserted in the bankruptcy court that the two suits were entirely exempt from the bankruptcy estate. *Id.* The trustee's unilateral settlement of the suits garnered $100,000. Although the debtors objected to the settlement, the bankruptcy court approved it and held that the debtors had only exempted a $4,000 partial interest in each of the suits. *Id.* at 344. The bankruptcy court "also suggested that [the debtors] had acted in bad faith." *Id.*

In deciding this case, the *Barroso-Herrans* court employed a different test from the other circuits that have examined this issue, but ultimately, its analysis was similar to that employed by the Ninth Circuit and Eighth Circuit.

The *Barroso-Herrans* court asked "how a reasonable trustee would have understood the filings under the circumstances." *Id.* The court then focused on the fact that "[t]he law suits sought damages for, among other things, the accounts receivable." *Id.* at 345. According to the court, "given the much higher valuations of the accounts receivable, the trustee might reasonably assume that the $4,000 figure reflected...a $4,000 interest in the suit's proceeds." *Id.* The court further explained that "this reading alone reconciles the law suit valuations with the accounts receivable valuations." *Id.* at 346.

The *Barroso-Herrans* court also engaged in the burden-shifting employed by the Eighth and Ninth Circuits in *Hyman* and *Wick*. Moreover, these three cases reviewed additional factors in determining the debtors' intent to exempt *vel non*. *See Barroso-Herrans*, 524 F.3d at 346 (discussing whether Barroso had a reason to negotiate with Lugo over the lawsuits); *Wick*, 276 F.3d at 416-17 (discussing post-filing conduct in determining debtor's intent); *Hyman*, 967 F.2d at 1319-20 ("This case turns largely on the proper interpretation of California's homestead exemption statute").

Although the First, Eighth, and Ninth Circuits have employed different tests than the

Third, Sixth and Eleventh Circuits in deciding the issue, they all ultimately would reach the same outcome on the facts of this case. Reilly indicated an intent on her bankruptcy schedules to fully exempt her business equipment in a manner that would satisfy the *Taylor*-based interpretation of Rule 4003(b) employed by the Third, Sixth, and Eleventh Circuits. Additionally, Reilly's immediate and extreme reaction of seeking to have her bankruptcy case dismissed rather than face the possibility of Schwab selling her business equipment would satisfy the conduct-based approach employed by the First, Eighth and Ninth Circuits to determine a debtor's intent to fully exempt an asset. Accordingly, despite a shallow circuit split on this issue, this case does not provide the appropriate vehicle for this Court's consideration of this issue.

### C. The Decision Below Does Not Encroach Unconstitutionally upon Congress's Exclusive Power to Legislate in the Field of Bankruptcy.

As a threshold matter, Schwab did not raise this constitutional issue in any of the courts below until his reply brief in the Third Circuit, and the issue was not addressed by any of the lower courts. *See* Pet'r-Appellant's Reply Br. 6,

*Schwab v. Reilly* (*In re Reilly*), No. 06-4290 (3d Cir. March 21, 2007). As this Court has stated, ordinarily it "does not decide questions not raised or resolved in the lower court[s]." *Taylor*, 503 U.S. at 645-46 (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (per curiam)). This policy helps maintain the integrity of the certiorari process. *Id.* None of the circuit courts that have addressed the exemption issue have ever considered the constitutional argument that Schwab presents.

Additionally, Schwab's argument fails because (i) the Third Circuit was not legislating with its decision in the proceedings below, and certainly not in a non-uniform manner; and (ii) the decision below does not unconstitutionally create more duties for the trustee in a bankruptcy case, nor does it unconstitutionally enlarge the exemptions available to debtors.

### 1. The Third Circuit's Decision Does Not Legislate, and Certainly Not in a Non-Uniform Manner.

Schwab asserts that the Third Circuit's decision "not only legislated in the field of bankruptcy, but has done so in a non-uniform way." Pet. 26. This argument is undeveloped, unad-

dressed by the lower courts, and ultimately unpersuasive.

Schwab attempts to shoehorn his argument regarding the added burden on the duties of a trustee into a constitutional rubric. Schwab argues that the duties of trustees set forth in Section 704(a)(1) do not include the 30-day objection requirement associated with exemptions. Pet. 28. Schwab essentially argues that Congress elected not to include such time limits among the duties of trustees, so they should not be imposed by the Third Circuit's decision. *Id.* Schwab further argues that the Third Circuit has legislated in a non-uniform manner. *Id.* Schwab cites the purported conflict among the circuits as the only support for his lack-of-uniformity argument. *Id.*

First, as noted above, the Third Circuit did not establish the present duties of a trustee to object to a claim of exemptions; any additional duties were created by this Court's decision in *Taylor*.

Second, while it is true that Section 704(a)(1) does not impose the 30-day objection time limit in its text, Section 704(a)(1) also does not include any other time limits to which bankruptcy trustees are subject. Nevertheless, there are

numerous time limits in other parts of the Bankruptcy Code and Rules to which trustees are subject. Schwab singles out this particular time limit as somehow required to be included in the text of the general duties of a trustee.

Third, as the discussion above and this Court's decision in *Taylor* itself makes clear, a trustee is not required to administer the entire estate in thirty days, only to object or seek a hearing on the valuation issue when an exemption is in question. If thirty days is insufficient, this Court's decision in *Taylor* suggested a trustee should seek an extension from the bankruptcy court.

Fourth, the 30-day objection period is prescribed by Bankruptcy Rule 4003(b), which was validly issued by this Court pursuant to rulemaking authority granted to this Court *from Congress*.

Fifth, even if the Third Circuit was considered to be legislating in the field of bankruptcy, it can hardly be accused of doing so in a non-uniform manner by virtue of actions undertaken by *other courts* in *other circuits*. To the contrary, the Third Circuit's treatment of this issue has been uniform.

### 2. The Decision Below Does Not Unconstitutionally Create More Duties for the Trustee or Enlarge the Exemptions Available to the Debtor.

Schwab contends that "[i]f Congress wished to make the exemptions of Section 522(d)(5) and (6) unlimited in amount, it could have done so when it last amended the Bankruptcy Code. . . . However, just as Congress did not choose to create the additional duties on trustees created by the Third Circuit holding, as described above, Congress did not chose [sic] to grant unlimited exemptions to debtors." Pet. 33-34.

As noted above, however, any expansion of trustee duties or exemptions available to the debtor follows from this Court's decision in *Taylor*, and that decision has been in place since 1992. Congress therefore has had over sixteen years to scale back the impact of that decision. Indeed, the *Taylor* opinion itself actually encouraged congressional scrutiny of the law in this area. *See Taylor*, 503 U.S. at 644-45. Despite the Court's invitation to Congress in the *Taylor* opinion, Congress left Section 522(l) of the Bankruptcy Code unchanged in its recent comprehensive revisions to the Bankruptcy Code in 2005, indicating an implicit acceptance

of *Taylor*. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) ("where Congress made substantive changes to the statute in other respects," courts should presume, "absent any [contrary] indication," that Congress adopts the existing interpretation); *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987).

## CONCLUSION

The record demonstrates that Reilly intended to and properly exempted the full value of the business equipment her parents had purchased for her. Accordingly, when Schwab failed to object to Reilly's claimed exemptions, the business equipment became fully exempted from the reach of the bankruptcy estate, and Schwab could not later seek to sell the property. Additionally, the decision of the Third Circuit correctly applies the objection time limit of Rule 4003(b) in a manner consistent with this Court's decision in *Taylor*. Finally, despite a shallow split among the circuits, the outcome would be the same under the decisions of each of the other courts of appeals that have examined this issue.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Gino L. Andreuzzi
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
DECHERT LLP
90 State House Square
Hartford, Connecticut 06103
(860) 524-3999

*Counsel for Respondent*

Dated: March 23, 2009

# APPENDIX

# APPENDIX A – DEBTOR'S BRIEF IN SUPPORT OF HER DEFENSE TO THE APPEAL TAKEN BY THE TRUSTEE OF THE CASE TO THE MIDDLE DISTRICT COURT OF PENNSYLVANIA FILED FEBRUARY 8, 2006

## UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 3:05-v-2489

WILLIAM G. SCHWAB, Trustee,

Appellant

v.

NADEJDA REILLY,

Appellee

## EXCERPT OF DEBTOR'S BRIEF

Now comes the debtor in the above captioned matter, Nadejda Reilly, by and through her undersigned counsel, Gino L. Andreuzzi, Esquire, and prays the court to dismiss the trustee's appeal from the order of bankruptcy court of Octo-

ber 20, 2005, which dismissed the trustee's motion to sell the property of the debtor claimed as exempt in her schedules based upon his failure to timely object to same under Federal Bankruptcy Rule 4003(b), as follows.

## I. Procedural History and Statement of Facts.

The debtor filed her voluntary petition in bankruptcy on April 21, 2005 with pertinent schedules B and C attached thereto, along with an inventory of her business equipment, said schedules incorporated herein by reference thereto as though fully set forth. The first meeting of creditors was held on June 22, 2005 in Hazelton, PA, trustee William G. Schwab presiding. Prior to the meeting the trustee made arrangements to have the inventoried items appraised on his own, and announced to the debtor at the meeting that his appraised value exceeded the value of the debtor by approximately, $7,200.00. The trustee's appraisal or estimate was stated verbally to the debtor and her counsel at the first meeting of creditors, but despite their request for written documentation for the appraised values, the trustee has never substantiated the appraisal amount in writing to them or to the court. He also indicated he de-

sired to have an auction to generate funds for unsecured creditors in the case. There is one secured party in reference to the debtor's automobile, for which the debtor has filed her intention to reaffirm the debt.

*****

## APPENDIX B – TRANSCRIPT OF HEARING BEFORE HONORABLE JOHN J. THOMAS UNITED STATES CHIEF BANKRUPCTY JUDGE FILED DECEMBER 9, 2005

## UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 5-05-52187

IN RE: NADEJDA REILLY,

Debtor

Argued October 20, 2005

Before: THOMAS, *Chief Bankruptcy Judge*

TRANSCRIPT EXCERPT

*****

THE COURT: Well, I'm not going to compel a resolution. But I think I've articulated the reasons why I'm going to deny your motion to dismiss the case.

Which takes me to the motion to sell. Now, that could be easily mooted if you convert. If you don't want to, we'll deal with a motion to.

MR. CHRISTMAN: Whether it's granted or not, I believe the conversion would still moot the sale.

But on the sale issue -- I mean you've already -- you've already heard, and I don't think more specific evidence -- that debtor or someone on behalf of debtor, at least, purchased these items for around $20,000 around two to three years ago. And while debtor's estimate of that value brought it in at around $10,000, and debtor exempts that $10,178.

The Trustee did not file an objection to the exemption because there was absolutely no basis to object to the amount exempted.

However, even at the meeting of creditors, the Trustee did indicate that the value of the property was in excess of debtor's values.

The contest here today on the sale is is the Trustee bound, not by the debtor's exemption, but by the debtor's valuation, even where the Trustee feels that the amount he could get at

auction and -- which is compound by an auctioneer, we don't have much in the way of disputed facts. But, frankly, the auctioneer would not be able to guarantee a $20,000 sale price of the property. His expectations are actually in the neighborhood of around 17 -- $17,200 from sale of the property, sufficient to, even if the Trustee's litigation costs rise, distribute several thousand dollars, perhaps five or more or significantly more if it's a very fortunate auction, to creditors.

And that's over and above paying the debtor our entire exempt interest. The trustee is not seeking to object or in any way overturn the debtor's exemption, but merely is asserting that he is not bound by the debtor's valuation. In certain cases, I believe the Taylor case, the 1992 Supreme Court case, the Court indicated that an unknown amount of property which the Trustee had -- on record had indicated he didn't feel was worth that -- was worth valuing, it was – it listed as unknown value, exempted an unknown amount, the Trustee didn't -- didn't object.

However, far more recently, in this -- not in this District, but in the Western District of Pennsylvania, among others, the Trustee has

not been bound by debtor's valuation. And the Trustee has not been required to object to a debtor's valuation.

While I must state that the Trustee has in the past, I believe this case mirrors those other cases where the Trustee should not be required to object to valuation and isn't bound by the debtor's valuations. There's no quarrel with the debtor's exemptions. Were she to seek to amend them and move them around, there may be. But it doesn't exist at present. And the Trustee feels that the sale offer a significant benefit to the estate, even after paying debtor's exempt interest of $10,718 in full.

THE COURT: Okay. So, basically you're suggesting that the debtor's schedules only exempted a dollar amount of 10,000 plus, not the entire breadth of the personal property described here.

MR. CHRISTMAN: Yes, Your Honor.

THE COURT: Okay. What I have here -- did you want to respond to that at all?

MR. ANDREUZZI: Well, Your Honor, I don't think it's -- what Attorney Christman says is ac-

curate. First of all, at the time -- prior to the first meeting of creditors, the Trustee, on its own initiative, sent an appraiser out to examine and appraise the property. And at the time of the meeting, he had higher valuations. He indicated verbally that his valuation was 17,000 -- approximately $17,333.

My client's valuation was $10,718. She claimed all of the property.

If you'll look at Taylor, this is a very similar situation. The -- the debtor told the Trustee that her claim was worth 90 to $110,000. And they had settlement offers to that effect.

And they disclosed this to the Trustee, the Trustee just didn't believe them or didn't think there was merit. He never challenged the value. Then when the jackpot came in, he ran in and said, not only should I be permitted to get all the money, Your Honor, that I should also -- only a small portion of the proceeds were exempt. However, he didn't challenge the valuations, and -- challenged the validity, not only challenged his -- you know, the exemption itself, but also the validity.

*Appendix B*

The validity also is a -- is two-thing. The one, you're right -- under the law, you're right, the values. This lady claimed all of her property was exempt. How is she to contest his values? He has the burden of objecting to the value so that he can have a sale based on higher values.

And unless the cases he cites were cases like where the value has popped up at later times and the Trustee had no idea what the value was at the time of the meeting. Once he has the values in front of him, he's obligated to go ahead and file objections. And then, hey, we're going to have a sale because this property is going to yield much more money. But having -- not having done it, he's stuck with both values --

THE COURT: I understand your point.

*****

# APPENDIX C – BRIEF FOR THE APPELLEE NADEJDA REILLY DATED MARCH 6, 2007

## UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 06-4290

WILLIAM G. SCHWAB, Trustee,

Appellant

v.

NADEJDA REILLY,

Appellee

EXCERPT OF APPELLEE'S BRIEF

*****

## Statement of Facts

The debtor, appellee, Nadejda Reilly, a cook and one person caterer filed her chapter 7 bankruptcy petition on April 21, 2005, with full and

complete schedules and other necessary statements. At schedule B[1] she listed and valued each and every item or piece of equipment of her business equipment, catering and restaurant furnishings, cooking utensils, cases, storage equipment and the like, on schedule B, with an attachment supplied thereto. The total value of the goods was set forth at $10,718.00. She then exempted all of these listed items on schedule C of her petition, again with property identified, values supplied and exemption provisions from the Bankruptcy Code referenced (11 U.S.C. sec. 522(d)(5) and 522(d)(6)).

Prior to the first meeting of creditors, held June 22, 2005, the trustee had an appraiser evaluate the equipment. With full knowledge of the appraiser's results, he informed the debtor that his report indicated a value of the business equipment to be approximately $6,300.00, and that he wanted to sell the equipment. However,

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[1] 10/06/06 in the appellate court docket the appellant indicates the record is available on the District Court CM/ECF. Schedules B and C of the debtor's petition are located thereat Docket entry 2, Voluntary Petition. The debtor's attached business equipment list is also attached to schedule B therein.

he never filed an objection under Fed.R.Bankr.P. 4003(b) to the exemption within thirty days, or asked for an extension of time from the court on the matter.

*****

Applying this reasoning to this case, where the appellee declared the full value of the exemption when listing them and lined them up with the full permitted values from 11 U.S.C. section 522(d)(5) & (6). It should also be mentioned that contrary to the statement made in appellant's brief that the debtor did not use the full dollar amount of section 522 d (5) toward the disputed business exemption, but applied the remaining balance to her under that section, $1,328.00, to exempt perishable food items listed and valued in Schedule B. The full value of the perishable items were not exempted because debtor had not further dollar amounts to apply to them.

*****

The Trustee in this case sent his appraiser to examine the exemptions prior to the first meeting of creditors, and announces thereat his values are higher than the debtors, but he never

exchanges the appraisal, as the debtor did at the onset of the case. He had all the information necessary to challenge the exemption. He knew of the dispute at the first meeting, yet failed to act under rule 4000 (b). The consequences for failing to object within the thirty days are clear, he loses the right to object to the exemptions, and the property passes from the estate back to the debtor by operation of law. Nonetheless, he either forgot, or presumed the code or case law guaranteed him the procedure of just moving to a sale on the property in this instance.

*****

## APPENDIX D – DEBTOR'S BRIEF IN SUPPORT OF HER ANSWER TO THE TRUSTEE'S MOTION TO SELL HER PERSONAL PROPERTY AT PUBLIC SALE, AND, IN THE ALTERNATIVE HER MOTION TO DISMISS HER VOLUNTARY PETITION FILED OCTOBER 20, 2005

**UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

No. 5-05-52187

IN RE: NADEJDA REILLY,

Debtor

EXCERPT OF DEBTOR'S BRIEF

Now comes the debtor in the above captioned matter, Nadejda Reilly, by and through her undersigned counsel, Gino L. Andreuzzi, Esquire, and prays the court to dismiss the trustee's motion to sell her personal property at public sale, and in support thereof submits the following brief:

*Appendix D*

**I. Procedural History and Statement of Facts.**

The debtor filed her voluntary petition in bankruptcy on April 21, 2005 with pertinent schedules B and C attached thereto, along with an inventory of her business equipment, said schedules incorporated herein by reference thereto as though fully set forth. The first meeting of creditors was held on June 22, 2005 in Hazelton, PA, trustee William G. Schwab presiding. Prior to the meeting the trustee made arrangements to have the inventoried items appraised on his own, and announced to the debtor at the meeting that his appraised value exceeded the value of the debtor by approximately, $7,200.00. The trustee's appraisal or estimate was stated verbally to the debtor and her counsel at the first meeting of creditors, but despite their request for written documentation for the appraised values, the trustee has never substantiated the appraisal amount in writing to them or to the court. He also indicated he desired to have an auction to generate funds for unsecured creditors in the case. There is one secured party in reference to the debtor's automobile, for which the debtor has filed her intention to reaffirm the debt.

*****

# REPLY BRIEF

Supreme Court, U.S.
FILED
APR 7 - 2009
OFFICE OF THE CLERK

No. 08-538

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner,*

*v.*

NADEJDA REILLY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Leighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELEYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
*Counsel of Record*
CRAIG T. GOLDBLATT
CAROLINE ROGUS
LESLIE S. GARTHWAITE
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

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## ARGUMENT

Reilly's Brief in Opposition correctly and repeatedly acknowledges (at 2, 9, 19-21, 27-37) that the courts of appeals have taken different approaches in addressing the question presented. That question is whether a trustee is required by Fed. R. Bankr. P. 4003(b) and this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), to assert an objection to a debtor's claimed exemption when the debtor's schedules *correctly* assert an exemption in a specified amount, but incorrectly list the value of the exempt property as being equal to the amount of the exemption. Despite acknowledging the conflict among the lower courts, Reilly urges that the petition be denied because, she speculates, she might have prevailed in this case even under the approaches more favorable to Schwab. There is absolutely no basis, however, for that speculation.

As the First Circuit recently noted in *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008) (Boudin, J.), the courts of appeals have offered three different readings of this Court's opinion in *Taylor*. *First*, the Fourth Circuit's reading is squarely in favor of Schwab —a trustee is not required to object under Rule 4003(b) so long as the trustee agrees that the debtor is entitled to an exemption in the amount set forth in the schedules. That is true, according to the Fourth Circuit, even if the schedules erroneously list the value of the property as being is equal to the amount of the exemption. *Second*, the First Circuit, Eighth Circuit, and Ninth Circuit have all ruled for bankruptcy trustees that have contended (as Schwab does here) that the value of the property in fact exceeded the amount of the exemption, but did *not* file objections within 30 days of the initial meeting of creditors (as Reilly con-

tends Rule 4003(b) requires). These courts, however, have employed analyses more dependent on the facts and circumstances than the Fourth Circuit's categorical rule. *Third*, in the decision below, the Third Circuit joined the Eleventh Circuit in reading *Taylor* to require a trustee to object even in circumstances in which the trustee agrees that the debtor is entitled to an exemption in the claimed amount. The Second Circuit, in dicta, has expressed a similar view. The reasoning of these courts, in short, is that by listing the value of the property in an amount equal to the exemption, a debtor manifests an intent to exempt the entire value of the property, even if it exceeds the amount the debtor may lawfully exempt. In that circumstance, these courts have reasoned, a trustee who intends to limit the debtor only to its lawful exemption is required to object to the claimed exemption—even though the trustee has no objection to the debtor taking an exemption in the amount claimed. In addition to these decisions from eight separate courts of appeals, dozens of decisions from bankruptcy appellate panels, district courts, and bankruptcy courts leave no doubt that there is a sharp division of authority among the federal courts that requires this Court's intervention.

Despite Reilly's contrary assertion, there can be no serious question that the outcome of this dispute turns on which of the three approaches this Court adopts. This case is an entirely appropriate vehicle for the resolution of an acknowledged and longstanding split on a significant issue of federal bankruptcy law. And while the stakes in this particular case may be small, there can be no dispute that—with the rate of individual debtor filings skyrocketing as a result of the national economic crisis, *see* Lawless, *Bankruptcy Filings Rising Faster Than Expected* (Mar. 2009), *available at*

www.creditslips.org/creditslips/2009/04 ("bankruptcy filings are rising dramatically")—they are quite substantial in the aggregate. This Court should grant the petition.

## I. THE COURTS OF APPEALS HAVE DIVIDED OVER THE MEANING OF THIS COURT'S DECISION IN *TAYLOR*

In a bankruptcy case filed by an individual debtor, certain of the debtor's assets are "exempted" from the bankruptcy estate—meaning the debtor is entitled to keep those assets, rather than turn them over to the trustee for liquidation and distribution to creditors. *See Rousey* v. *Jacoway*, 544 U.S. 320, 322 (2005). Some assets, like the debtor's right to receive social security benefits, 11 U.S.C. § 522(d)(10)(A), the right to a criminal restitution award, *id.* § 522(d)(11)(A), or an unmatured interest in a life insurance contract, *id.* § 522(d)(7), are exempted in their entirety, regardless of their value. Other assets, by contrast, are exempt only up to certain dollar amounts—such as "the debtor's interest, not to exceed $3,225 in value, in one motor vehicle," *id.* § 522(d)(2), or "the debtor's aggregate interest, not to exceed $1,350 in value, in jewelry," *id.* § 522(d)(4). This case involves claimed exemptions in this second category.

Upon the filing of a bankruptcy petition, a debtor is required to file a schedule listing the value of the debtor's assets. Fed. R. Bankr. P. 1007(b). The debtor is also required to file a separate schedule setting forth the property the debtor contends is exempt. Fed. R. Bankr. P. 4003(a).

If any party, such as a creditor or the trustee, disagrees with the debtor's claimed exemptions, Bankruptcy Rule 4003(b) requires that party to assert such

an objection within 30 days of the initial meeting of creditors. *See* Fed. R. Bankr. P. 4003(b).

The issue presented here arises when the debtor's schedules list the value of the property, and the amount of the exemption, in the same amount. Specifically, the question is whether—if the trustee agrees that the debtor is entitled to an exemption in that stated amount, but contends that the property may be worth more than its listed value—a trustee is required by Rule 4003(b), and this Court's decision in *Taylor* to assert an objection within 30 days.

As the First Circuit recently explained, *see In re Barroso-Herrans*, 524 F.3d at 345, the courts of appeals have adopted *three* different approaches to that question.

- In the present case, the Third Circuit joined with the Eleventh Circuit, and the Sixth Circuit Bankruptcy Appellate Panel in holding that if the trustee fails to object, the entire property is deemed exempt, regardless of its actual value. Pet. App. 16a; *In re Green*, 31 F.3d 1098, 1100 (11th Cir. 1994) (permitting full value of lawsuit as exemption even though scheduled with a value of $1); *In re Anderson*, 377 B.R. 865, 875-876 (B.A.P. 6th Cir. 2007). According to these courts, listing the property and the exemption in the same amount necessarily manifests an intent to exempt the entire asset. If a trustee believes that some portion of the asset is not exempt (because its value exceeds the stated amount), the trustee must file a timely objection asserting that position. In dicta, the Second Circuit has taken the same position. *See In re Bell*, 225 F.3d 203, 210 (2d Cir. 2000) (in chapter 11 case in which debtor claimed an exemption of $490, listed asset as having

a value of $490, and the trustee did not object within 30 days, the court observed that if the case were a "simple Chapter 7 case ... the trustee's objections would be barred as untimely under the Bankruptcy Rules themselves and [*Taylor*]").

- The Fourth Circuit has reached the diametrically opposite conclusion, holding that "*Taylor* does not purport to require a trustee to object to a claimed exemption to which the debtor is fully entitled." *In re Williams*, 104 F.3d 688, 690 (4th Cir. 1997). Because the trustee does not object to the debtor's asserting an exemption in precisely the amount stated, Rule 4003(b) has no application. Applying this same line of reasoning, in *In re Grablowsky*, 32 F.3d 562, 1994 WL 410995 (4th Cir. 1994) (table), the Fourth Circuit held that a debtor that listed both the asset and an exemption in the nominal amount of $1 was entitled, when the trustee filed no objection, to an exemption of $1—not the full value of the property.

- Other courts have rejected the bright-line resolutions of the Third, Fourth, and Eleventh Circuits, and engaged in a facts-and-circumstances inquiry into whether the trustee would reasonably understand the debtor's schedules, on the facts of the particular case, to reflect an intent to exempt the entire asset. *See In re Wick*, 276 F.3d 412, 416 (8th Cir. 2002) ("The facts suggest that Ms. Wick, her counsel, and the trustee understood that the options were only partially exempt."); *In re Hyman*, 967 F.2d 1316, 1319 (9th Cir. 1992) ("the Hymans did not sufficiently notify others that they were claiming their entire homestead as exempt property; their schedule only gave notice that they claimed $45,000

as exempt, which is the proper amount of their homestead allowance").

The First Circuit's decision in *Barroso-Herrans* explains that the courts to have addressed this issue have divided into these three camps. The First Circuit joined the Eighth and Ninth Circuits in holding that the mere fact that the debtor lists the value of an asset as being the same amount as the debtor's claimed exemption does not require the trustee to object within 30 days. In *Barroso-Herrans*, the debtor listed the value of certain causes of action as $4,000, and claimed $4,000 of exemptions in the same causes of action. The trustee did not object, and the debtor settled those claims for $100,000. Contrary to the decision below, the First Circuit had no trouble finding that the debtor was entitled to exempt only $4,000, with the balance becoming property of the bankruptcy estate.. *See* 524 F.3d at 345-346. The First Circuit rejected the approaches of the Third and Eleventh Circuits that require a trustee to object in those circumstances. The court did not, however, go as far as the Fourth Circuit in adopting a bright-line rule under which a trustee is *never* required to object so long as the schedules are not facially objectionable, finding it "is enough to resolve this case" that it was "objectively reasonable," for the trustee to conclude that the debtor did not intend to exempt the entire property.

Reilly does not—and cannot—dispute the existence of a circuit split, which has been pointed out not only by various of the courts of appeals, but also by academic commentators. *See, e.g.*, Ponoroff, *Procedural Exemptions and the* Taylor *Legacy*, 7 J. Bankr. L & Prac. 397, 398-399 (May/June 1998) ("[p]aradoxically ... a number of interpretational issues have been spawned in the

wake of the decision in *Taylor* over which there is a disturbing lack of consensus in the reported caselaw.").

To the contrary, Reilly repeatedly acknowledges the differences in approach among the various courts of appeals (*see* Opp. 2, 9, 19-21, 27-37), and instead merely speculates that some courts that have adopted approaches that differ from that employed by the Third Circuit might nevertheless have ruled in her favor. That contention, however, is insubstantial. There can be no question that in the Fourth Circuit, where a trustee is not required to object if he does not dispute the debtor's entitlement to an objection in the scheduled amount, Schwab would prevail.

Nor is there any basis to credit Reilly's speculation that she might have prevailed in the First, Eighth or Ninth Circuits. Reilly makes much of the fact that Schwab knew that the value of the property exceeded the scheduled amount. But that is not a factor that would help Reilly in those jurisdictions. To the contrary, the First Circuit pointed to precisely this factor in support of the *opposite* conclusion. *Barroso-Herrans*, 524 F.3d at 346 ("a $4,000 valuation for an entire multi-million dollar law suit including the accounts receivable makes no sense" and thus indicates that the debtor did not intend to exempt the entire claims). The dispositive issue in those courts was *not* whether the trustee knew that the value of the asset exceeded the amount listed on the schedule, but whether the debtors' schedules or the parties' course of dealings made sufficiently clear that the debtor took the position that he was entitled to exempt the entire asset. The Third Circuit below, following the Eleventh Circuit's approach in *Green* (under which the fact that the value of the property was listed in the same amount as the exemption was sufficient to find that the entire asset was exempt),

never engaged in any such analysis. And Reilly's Opposition points to no statement or action taken before the expiration of Rule 4003(b)'s thirty-day deadline that would have put Schwab on notice that Reilly claimed a right to exempt all of her kitchen equipment—not just the $10,718 that she listed on her schedules. *See* Opp. 2-4, 33.

In sum, there can be no serious dispute that this petition presents a question on which the court of appeals have divided, and that the outcome of this case will turn on the answer this Court provides to the question presented. Eight different courts of appeals—in addition to many lower federal courts[1]—have addressed the question. The division of authority, acknowledged by the court of appeals below (*see* Pet.

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[1] *See, e.g., In re DeSoto*, 181 B.R. 704, 708 (Bankr. D. Conn. 1995) (*Taylor* only applies where the trustee was supposed to have objected to the "*nature* of the claimed exemptions" (emphasis in original)); *In re Mitchell*, No. 06-144, 2009 WL 275758, *5 (Bankr. N.D. W. Va. Jan. 28, 2009) ("In holding that the Debtor in this case is limited to a $21,000 homestead exemption ... the court realizes that it is reaching a result directly contrary to *In re Reilly*, 534 F.3d 173 (3d Cir. 2008), which is the case most analogous to the facts before this court.... However, the court cannot conclude—as the Court of Appeals for the Third Circuit did—that the Debtor put her Chapter 7 trustee on notice that she was claiming property as wholly exempt by equating the value of her property and her claim of exemption when the claim of exemption is proper and below the statutory cap."); *In re Heflin*, 215 B.R. 530, 533 (Bankr. W.D. Mich. 1997) ("[T]he Trustee in this case did not object because there was both a valid statutory basis for the exemptions and the amount was within the statutory limits."); *Anderson*, 377 B.R. at 875 (adopting reasoning of Eleventh Circuit in *Green*, ultimately approved by the court of appeals in the case at bar); *In re Cormier*, 382 B.R. 377, 409 (Bankr. W.D. Mich. 2008) (expressly rejecting and declining to follow *Anderson*).

App. 12a ("In reaching our holding today, we recognize that there is a split of authority on this issue among courts that have considered it.")), is deep and entrenched, and cannot be resolved absent this Court's intervention.

## II. THE COURT OF APPEALS WAS INCORRECT ON THE MERITS

The Third Circuit erred in its application of this Court's decision in *Taylor*. Because there was no statutory basis for the claimed exemption, 503 U.S. at 639, 642, this Court unsurprisingly held in *Taylor* that the trustee was required to assert its objection to claimed exemption within the time period provided in Rule 4003(b), *id.* at 639, 643. This crucial fact of *Taylor*—a fact that makes that case decisively different from this one—was that the exemption the debtor claimed there was invalid on its face, triggering the trustee's obligation to object.

The debtor here, by contrast, listed $10,718 on her schedule of exemptions, an amount she was fully entitled to exempt under Sections 522(d)(5) and 522(d)(6) of the Bankruptcy Code. Schwab therefore has no objection to Reilly's claimed objection—his only concern related to the valuation of the property, a subject to which the text of Rule 4003(b) does not speak at all. Because *Taylor* has no application to this case, Schwab was not obligated to object within the thirty-day time period. Applying *Taylor* to extend to cases in which the trustee takes no issue with the debtor's claimed exemption—only its valuation—requires "an erroneous leap of logic." *In re Heflin*, 215 B.R. 530, 534 (Bankr. W.D. Mich. 1997).

Schwab's reading also accords with the text of Rule 4003(b). That provision addresses objections that must

be filed to a "claim of exemption." The rule sets out no procedure for objecting to the debtor's "valuation" of its property. The proper mechanism for resolving questions of valuation is to test the debtor's contention in the marketplace by offering the property for sale. Indeed, to construe Rule 4003(b) to require a trustee to object to a debtor's valuation—not just his claimed exemption—in the time set out in the Rule would effectively require the trustee to administer the entire estate within 30 days, a result that Congress could never have intended.

A trustee would have no reason to sell property in which a debtor claims an exemption if the highest and best offer would not generate proceeds, after paying any secured creditor the value of its lien, in excess of the asserted exemption. In such a case, the trustee would allow the debtor to retain the property. But if the trustee is able to obtain a price that generates value for unsecured creditors in excess of the debtor's asserted exemption, the trustee would then sell the property, delivering to the debtor the full value of the asserted exemption, with the excess value distributed to creditors. Authorizing a trustee to take that action would give the debtor precisely the rights Congress provided in Section 522 of the Bankruptcy Code, avoiding the gamesmanship (and the windfall) encouraged by the rule adopted by the court of appeals.[2]

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[2] While Reilly responds separately to the Petition's suggestion that the court of appeals' decision encroaches on Congress' authority (Opp. 38-42), Schwab did not intend to present that argument as a separate question, only a reason in support of his (more natural) reading of Rule 4003(b) and this Court's decision in *Taylor*. It may therefore be appropriate for the Court to limit the grant of certiorari to the first question presented in the petition.

## CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted.

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Leighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELEYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
*Counsel of Record*
CRAIG T. GOLDBLATT
CAROLINE ROGUS
LESLIE S. GARTHWAITE
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

APRIL 2009

# AMICUS CURIAE BRIEF

Supreme Court, U.S.
FILED
NOV 24 2008
OFFICE OF THE CLERK

No. 08-538

# In The Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
TRUSTEE FOR NADEJDA REILLY,

*Petitioner,*

v.

NADEJDA REILLY,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

## BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES IN SUPPORT OF PETITIONER

Martin P. Sheehan
*Counsel of Record*
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth Street
Wheeling, West Virginia 26003
(304) 232-1064

*Counsel for Amicus Curiae*
*National Association of*
*Bankruptcy Trustees*

*November 24, 2008*

THE LEX GROUP DC • 1750 K Street N.W. • Suite 475 • Washington, DC 20006
(202) 955-0001 • (800) 815-3791 • Fax: (202) 955-0022 • www.thelexgroupdc.com

**Motion for Leave to File a Brief of Amicus Curiae National Association of Bankruptcy Trustees in Support of Petitioner Pursuant to Rule 37.3**

On October 29, 2008 the undersigned gave notice to the parties of the intent of the National Association of Bankruptcy Trustees to file a brief of Amicus Curiae in Support of Petitioner. Consent to file the brief has been received from the Petitioner. The Respondent has not responded to the request.

The National Association of Bankruptcy Trustees is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.

## Questions Presented

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003, even though the amount claimed as exempt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress' exclusive power to legislate in the field of bankruptcy when it created unlimited "in kind" exemptions where the statute contains specific dollar-value limitations?

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## Interest of the Amicus Curiae

The Amicus Curiae, is the National Association of Bankruptcy Trustees. NABT is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.[1]

## Statement of Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## Statutory and Rule Provisions

### 11 U.S.C. § 522(d)

The following property may be exempted under subsection (b)(2) of this section:

---

[1] No other person or entity, except for the amicus curiae, their members and their counsel, made a monetary contribution to the preparation and submission of this brief.

(1) The debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $800 plus up to $7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability,

death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless -

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

**11 U.S.C. § 522(l)**

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

**Federal Rule of Bankruptcy Procedure 1007.** Lists, Schedules and Statements; Time Limits

. . . .

(b) Schedules and statements required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

**Federal Rule of Bankruptcy Procedure 4003**

Exemptions

(a) Claim of exemptions.

A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objections to claim of exemptions.

A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof.

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property.

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

## Summary of the Argument

Schedules filed in bankruptcy cases are filed following the format established in Official Form 6 promulgated by the Judicial Conference of the United States as contemplated by the Federal Rules of Bankruptcy Procedure. These forms require a debtor to provide discrete information. The Schedules implement various requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

The Bankruptcy Code permits debtors to exempt some property subject to discrete dollar limitations. When those limits are the same as the value of an asset as reported by a debtor, there is no

reason to believe that the asset was rendered fully exempt, aside from an argument that hinges on a misreading of Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). While there are time limits to object to exemptions, there is no time limit for a trustee to object to the scheduled value of an asset. None should be implied.

This issue is a recurring one around the nation. There is a split among the Courts of Appeals. In addition, the reasoning and outcome of the instant case results from a failure to consider the actual language of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

## Reasons for Granting the Petition for Certiorari

### I. Introduction

In asking this Court to review the instant case, the Petition for a Writ of Certiorari has focused on the conflict present in decisions of the United States Courts of Appeal on the questions herein presented. The Courts of Appeal for the Third, and Eleventh Circuits have recognized exemptions in excess of statutory limits when the scheduled value of an asset and the dollar value of the exemption claimed are the same. Schwab v. Reilly (In re: Reilly) 534 F.3d 173 (3d Cir. 2008); and Allen v. Green (In re: Green), 31 F.3d 1098 (1994). See also, Olson v. Anderson (In re: Anderson), 377 B.R. 865 (6th Cir. BAP 2007) This view has been rejected in the Courts of Appeals for the Eighth and Ninth Circuits. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8th Cir. 2002) and Hyman v. Plotkin (In re: Plotkin), 967 F.2d 1316 (9th Cir. 1992). No consensus has emerged.

The issues here recur in many bankruptcy cases. The issues involve understanding the meaning of information placed on bankruptcy schedules whose format is the subject of an Official Form approved by the Judicial Conference of the United States. The United States Court of Appeals for the Third Circuit determined in this case that reading the information provided on those forms by the debtor using a plain meaning approach to be flawed.

The amicus curiae, the National Association of Bankruptcy Trustees, share the concerns of the Petitioner about the conflict between the Courts of Appeal. NABT files this brief to emphasize the importance of the questions presented to the administration of the bankruptcy laws.

Bankruptcy cases are initiated by the filing of bankruptcy petitions to which numerous bankruptcy schedules are attached. The schedules require detailed financial information in a format established in Official Forms promulgated by the Judicial Conference of the United States as authorized by the Federal Rules of Bankruptcy Procedure.

Included in the Official Forms are forms pertaining to the disclosure of assets, their value, claims of exemptions, and the value of the exemptions claimed. Where exemptions established by statute contain specific dollar limitations, the schedule of the value of exemptions should objectively always be understood to claim the value of the dollar exemption so expressed as the exemption claimed.

The value of the asset reported on bankruptcy schedules by a debtor represents the debtor's opinion of value of the asset, but such value should have no impact on the understanding of what has been claimed exempt. To the extent that the value of the asset reported by a debtor has been considered by the lower courts as part the claim of exemptions, such an approach represents a misunderstanding of a prior decision of this Court in Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). That misunderstanding encourages a departure from the accepted and usual course of judicial proceedings such that this Court should review this issue. Because the lower courts have become seriously divided on the proper approach to the understanding of what bankruptcy schedules mean, this Court should hear the instant case and resolve the conflict by reference to the underlying statutory scheme, specifically the Bankruptcy Code, as consistently augmented by the Federal Bankruptcy Rules of Procedure and the Official Forms.

## II. The Statutory Scheme

When an individual files for bankruptcy relief a bankruptcy estate is created. The estate consists of the property described in 11 U.S.C. § 541. Generally, all the assets of a debtor, whether real, personal, tangible, intangible, fixed or contingent, become assets of the estate. The estate can grow in the event property is recovered for the benefit of the estate.

To permit a debtor to have something with which to restart economic life, Congress has provided that a debtor may exempt property

described in 11 U.S.C. § 522. Debtors may choose to exempt property under provisions of state law, or under a scheme provided in the Bankruptcy Code. Nadejda Reilly claimed exemptions pursuant to the Bankruptcy Code, specifically under 11 U.S.C. § 522(d).

The Code permits the exemption of specific forms of property in different ways. Some specific forms of property may retained regardless of value. For example, professionally prescribed health aids may be retained without regard to value. 11 U.S.C. § 522(d)(9). Such property is generally said to be exempt "in kind."

Some specific forms of property may be exempt subject to discrete limitations on value. Vehicles, exempt up to a value of $2,950[2], under 11 U.S.C. § 522(d)(2); jewelry, exempt up to a value of $ 1,225, under 11 U.S.C. § 522(d)(4); and, tools of the trade, exempt up to a value of $1,850 under 11 U.S.C. § 522(d)(6); are examples of specific forms of property exemptions with dollar limitations.

A third type of exemption permits exemption of specific forms of property subject to a flexible limitation. A payment of alimony or support, for

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[2] All of the dollar limitations in 11 U.S.C. § 522 are indexed pursuant to the provisions 11 U.S.C. § 104. That provision causes the dollar limits to change on April 1 of every third year. The debtor, Ms. Reilly filed for bankruptcy on April 21, 2005. The amounts were adjusted upward once since that time, on April 1, 2007. The amounts in effect at the filing of the instant case continue to apply throughout a case per 11 U.S.C. § 104(c). Consequently those values have been used herein.

example, may be exempted in an amount "reasonably necessary for the support of a debtor or a dependent of the debtor.

Finally, the Bankruptcy Code provides a "wild card" or "catchall" exemption in 11 U.S.C. § 522(d)(5). This provision permits a debtor to exempt the aggregate interest in any property having a value of at least $975, plus $9,250, of the unused portion of a larger exemption provided for a residence in 11 U.S.C. § 522(d)(1).

It is the exemption of certain restaurant equipment by the debtor that is at issue here. The debtor reported the equipment had a "value" of $10,718. She claimed part of the restaurant equipment having a value $1,850 was exempt under the "tools of the trade" exemption. She also used an exemption under the "wildcard" provision to claim $8,868 of the restaurant equipment as exempt. These amounts $1,850 and $8,868, total, $10,718, the value of the property as reported by the debtor.

## III. The Exemption Process

As part of the filing process a debtor must file a "list of creditors" and a "schedule of assets and liabilities." 11 U.S.C. § 521(a). A debtor must file "a list of property" that the debtor claims exempt pursuant to 11 U.S.C. § 522. Neither the word list or property is further defined in the Bankruptcy Code.

The Federal Rules of Bankruptcy Procedure do provide additional instruction about the schedule of assets, and the list of exemptions. Federal Rule of

Bankruptcy Procedure 1007(b)(1) requires a "schedule of assets and liabilities" as prescribed by the Official Forms. Federal Rule of Bankruptcy Procedure 4003 requires a debtor to "list the property" claimed as exempt on the schedule of assets required by Rule 1007. Federal Rule of Bankruptcy Procedure 9009 provides for Official Forms to be prescribed by the Judicial Conference and that said forms are to be construed to be consistent with the rules and the Code.

Official Form 6 prescribed a series of Schedules. Schedule A required a debtor to list real property. Schedule B required a debtor to list personal property. Schedule C required a debtor to set forth any claim that property is exempt.

Schedule A and B required a debtor to set forth a description of property and its location in a columnar format. In 2005, one of the additional columns on each schedule was titled "current market value of debtor's interest in property, without deducting any secured claim or exemptions.[3]" Schedule C required a similar format, although the location of the property need not be repeated. Schedule C did require a debtor to report "value of the claimed exemption" in one column and "current market value of property without deducting exemption[4]" in another.

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[3] The word "market" was deleted by an amendment to the Official Form made between 2005 and 2008.

[4] The word "market" was deleted by an amendment to the Official Form made between 2005 and 2008, on this form as well.

Had their been a creditor with a secured claim against this kind of property, the amount of any secured claim would have been reported on Schedule B. The identity of the creditor, the property subject to the lien, the value of the property and the amount of the lien would have been required to be listed on Schedule D of the petition.

## IV. Two Views of the Bankruptcy Schedules

The debtor claims that she listed the restaurant equipment as an asset on Schedule B. As part of Schedule B, and again on Schedule C, Ms. Reilly asserts she listed the current market value of the property at $10,718. On Schedule C, she asserts she claimed exemptions of a like amount, using the tools of the trade and the catchall exemptions. She then asserts she has exempted all of the restaurant equipment and that because the trustee did not file a timely objection to the exemption, the bankruptcy estate has no further interest in the restaurant equipment.

The trustee on the other hand reasons that when he read Schedule C as filed by the debtor, he understood from a plain reading of the schedules that the debtor had claimed an exemption in restaurant equipment having a value of $10,718. He knew that such an amount could be lawfully claimed as exempt under the statutes described by the debtor. He did not believe he could object that her claim of exemption was in any way incorrect.

For example, he had learned the debtor was a cook and had been running a restaurant. Her use of the tools of the trade exemption to the extent available for restaurant equipment was unobjectionable. Her use of the catchall exemption was for an amount lawfully available to her under that section was similarly unchallengeable. See, In re: Heflin, 215 B.R. 530 (Bankr. W.D. Mich. 1997).

The trustee did deny that Bankruptcy Rule 4003 obligated him to dispute the claimed market value of the property within the time limits prescribed in that Rule. The trustee moved to sell the restaurant equipment which he had come to believe was worth approximately $18,000 to $20,000. Had he been permitted to do so, the trustee would have distributed $10,718 to the debtor in satisfaction of her exemption claim, paid the expenses of sale, and distributed the surplus to creditors.

## V. The Meaning of Property in Sections 522(d) and 522(l)

In 11 U.S.C. § 522(d) the statute describes what may be exempt as "[t]he debtor's aggregate interest, not to exceed $ [a stated dollar amount] in value in ....[various described property]. This language is used in subsection 1 for residential property, in subsection 2 for a motor vehicle, in subsection 3 for household goods, in subsection 4 for jewelry, in subsection 5 for any property, in subsection 6 for tools of the trade, and in subsection 8 for the cash surrender value of life insurance policies. These are repeated dollar limitations on

exemption in a particular kinds of property. This language contrasts with the way unlimited exemptions on unmatured life insurance contracts, and prescription health aids in subsections 7 and 9 were defined.

Section 522(l) of the Bankruptcy Code provides that a debtor shall "file a list of exempt property that the debtor claims as exempt...." This section does not say the debtor must list "the value of the exemption claimed in" the property claimed as exempt, although clearly value is an important limitation on many exemptions provided by Congress. The phrase identified here as having been omitted appears to be implied component of property when that term is use in subsection 522(l).

Implying the missing phrase, does cause a subtle shift in the meaning of the word property. Although often the same word in the same section should have the same meaning, the subtle shift is explained in the different purposes of the different subsections. For Congress to speak with particularity about the aggregate value of property as part of its description of discrete exemptions, but omit that precision when describing an obligation to file a list of exempt property is not surprising. Depending on the context, property is a word that can fairly encompass both the notion of property as an item or the value of an item. In re: Cormier, 382 B.R. 377, 396-97 (Bankr. W.D. Mich. 2008)

The alternative, avoiding this shift as part of statutory construction, would imply that listing any property as exempt would make it fully exempt.

Clearly this would render all the limitations on exemptions meaningless. That construction is more improbable. In creating the Official Forms, the Advisory Committee seemed to recognize the need for this kind of shifting interpretation of exempt property. Schedule C of Official Form 6 requires a debtor to describe the property and to set forth the "value of the claimed exemption."

## VI. The Impact of Taylor v. Freeland and Kronz

The debtor has apparently recognized that an effort to pursue a statutory interpretation of section 522(l) would be foolhardy and has not made this claim overtly. Still this is the essence of the claim being made in this litigation. The debtor asserts that the value of her claimed exemption was $10,718. Despite having made such a report as part of Schedule C, she subsequently asserted that she had really claimed an exemption, not available to her overtly, of a 100% interest in restaurant equipment. Had she said so overtly, the trustee would have known of her improvident claim, and would have known her claim of exemption was not supported by statute. In re: Einkhorn, 330 B.R. 570 (Bankr. E.D. Mich. 2005). The failure of the trustee to deduce her intent, the debtor insists, was the fault of the trustee.

An argument like this can only be the result of attempting to apply a discussion from a Court decision that was not intended to address the issue at hand. That is exactly what has happened here. In Taylor v. Freeland and Kronz, 503 U.S. 638 (1992) the Supreme Court granted certiorari to determine if

a trustee who had failed to object to an exemption within the time limit established in Federal Rule of Bankruptcy Procedure 4003, could object to an exemption to which a debtor had no colorable basis after the 30 day period had expired. In Taylor, this Court said that all objections had to be filed within the time period prescribed for objections.

Taylor arose in a factually odd case. The debtor had reported the value of an ongoing lawsuit as "unknown." Her schedule of exemptions described the exemption as proceeds from lawsuit and also described the value as "unknown." The trustee made a timely inquiry into the lawsuits potential and had apparently been accurately informed that a settlement of $110,000 was optimistic, but conceivable. Thereafter, the trustee appears to have done very little. Significantly, he did not object to the exemption, as poorly stated as it was. The litigation did settle for $110,000 and the trustee sought to administer the proceeds. His failure to file a timely objection was held fatal to his effort to do so.

One of the oddities about Taylor should be noted. The value of the lawsuit and the exemption were given as "unknown" in Taylor. This is unusual. Despite this language, the Supreme Court described the property as fully exempt. Either the parties agreed it had been fully exempted, or this Court may have decided that the description of the property, " proceeds of lawsuit" justified interpreting the list of exempt property as fully exempting all of the proceeds of the lawsuit. Trustees have reacted accordingly since. When unknown appears as the value of an exemption, trustees do routinely object to

such claims. Taylor's notion that deadlines lead to certainty has impacted the decision to object to poorly described exemptions, as well.

However what has made Taylor such a large part of the discussion on the instant question, arises from some language in the majority opinion. Noting that the trustee was bound by the deadlines of Federal Bankruptcy Rule of Procedure 4003, the opinion of the Court made the following observation:

> If Taylor did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b).

Id. at ____. This phraseology has led some lower courts to find that the value of the property claimed exempt is part of the process of objecting to exemptions. Some lower courts, including the Court of Appeals for the Third Circuit in this case, have concluded that where the market value of property reported by the debtor and the value of the exemption claimed by the debtor is equal in amount, the Schedules should be construed as reflecting an intent by the debtor to exempt the full value of the asset, and that the asset is fully exempt unless objected to by the trustee within the time period set forth by Rule 4003. Some courts have gone further and held that where the market value reported by a debtor, less the amount of the secured claim as reported by the debtor, i.e. the reported equity,

equals the amount claimed exempt, then the property is fully exempt.

The National Association of Bankruptcy Trustees, the amicus curiae here, contests the inevitability of these conclusions about Taylor. The reference to the "value of potential proceeds of the lawsuit" can be understood both as the value of the property and the value of the claimed exemption. If there was an issue about the value of the claimed exemption, certainly the process described in Rule 4003(c) would provide a method for determining that amount. Rule 4003 does not imply any reason for examination of the value of the property. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8th Cir. 2001); In re: DeSoto, 181 B.R. 704, 708 (Bankr. D. Conn. 1995). Courts which have performed such an analysis are wrong. Zupansic v. Hyman (In re: Zupansic), 259 B.R. 388, 391 n.3 (Bankr. M.D. Fla. 2001).

Where dollar values are attributed to exemptions, the exemptions should be determined objectively by the amount claimed. The debtor's opinion of the value of the debtor's property is not logically a factor to be considered in at all as part of the exemption process. To the extent that the lower courts have suggested it should be, there is no support in the language of the Code, the Rules or the Official Forms for such a view. Notes of the Advisory Committee relevant to the change in the Official Form which deleted the word "market," as a modifier for value as part of Schedule A, B and C, since 2005

actually undercuts reliance on what value is even being reported.[5]

## Conclusion

The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Official Forms all impact how information is presented in filings. One might assume that the detail required by Code, the Rules and the Official Forms would establish an objective standard by which this information might be understood. Yet, the disagreement between the litigants here about the meaning of what has been reported on the bankruptcy schedules is not an isolated dispute. As reflected in the cases discussed below, the Courts of Appeals, and the lower courts, are spending an inordinate amount of time on something as fundamental as the meaning of information reported on bankruptcy schedules. This Court has the ability to provide fixed guidance about how to complete and how to read a bankruptcy petition. Explaining this simple, but fundamental, concept in the instant case would be of significant value to the bankruptcy community. This is the critical reason why the instant case should be heard by this Court.

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[5] In Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997) this Court found value for some purposes under the Bankruptcy Code to be "replacement value."

Respectfully submitted,

National Association of Bankruptcy Trustees,

/s/

*Counsel of Record*
Martin P. Sheehan
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth St.
Wheeling, WV 26003
(304) 232-1064
Fax (304) 232-1066
*Attorneys for the Amicus Curiae*
*National Association of Bankruptcy Trustees*

# JOINT APPENDIX

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(5)

No. 08-538

Supreme Court, U.S.
FILED
JUL 10 2009
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner*,

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## JOINT APPENDIX

G. ERIC BRUNSTAD, JR.
*Counsel of Record*
COLLIN O'CONNOR UDELL
MATTHEW J. DELUDE
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

*Counsel for Respondent*

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
LESLIE S. GARTHWAITE
NATHAN A. BRUGGEMAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

*Counsel for Petitioner*

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

PETITION FOR CERTIORARI FILED OCTOBER 20, 2008
CERTIORARI GRANTED APRIL 27, 2009

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HASTDC 4TE103

5338

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GINO L. ANDREUZZI
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

*Counsel for Respondent*

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB &
ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS,
MISHKIN, CORVELEYN,
WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

*Counsel for Petitioner*

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**General Docket**
**Third Circuit Court of Appeals**
**Court of Appeals Docket #: 06-4290**

| | |
|---|---|
| 10/04/2006 | Bankruptcy Case Docketed. Notice filed by William G. Schwab. (LWC) |
| 10/04/2006 | RECORD available on District Court CM/ECF. (LWC) |
| 10/16/2006 | APPEARANCE from Attorney Jason Z. Christman on behalf of Appellant, filed. (LWC) |
| 10/16/2006 | (POSITIVE) DISCLOSURE STATEMENT on behalf of Appellant, filed. (LWC) |
| 10/16/2006 | INFORMATION STATEMENT on behalf of Appellant, received. (LWC) |
| 10/16/2006 | CONCISE SUMMARY OF CASE on behalf of Appellant, received. (LWC) |
| 10/18/2006 | FOLLOW UP LETTER to Gino L. Andreuzzi requesting the following documents: **Appearance Form **Disclosure Statement (LWC) |
| 11/06/2006 | APPEARANCE from Attorney Gino L. Andreuzzi on behalf of Appellee Nadejda Reilly, filed. (LWC) |
| 11/06/2006 | DISCLOSURE STATEMENT on behalf of Appellee Nadejda Reilly, filed. (LWC) |
| 12/26/2006 | BRIEFING NOTICE ISSUED. Appellant's brief and appendix due 2/5/07. (LWC) |

| | |
|---|---|
| 02/02/2007 | ELECTRONIC BRIEF on behalf of Appellant William G. Schwab, Copies: 1, Pages: 22, delivered by mail, filed. Certificate of service date 2/2/07. (GPK) |
| 02/05/2007 | HARD COPY RECEIVED from Appellant William G. Schwab (10cc w/ vol 1 of appendix attached). (GPK) |
| 02/05/2007 | APPENDIX on behalf of Appellant William G. Schwab. Copies: 4, Volumes: 2 (vol 1 attached to Hard Copy of Brief), Delivered by mail, filed. Certificate of service date 2/2/07. (GPK) |
| 02/07/2007 | HARD COPY RECEIVED from Proposed Amicus-Appellant Natl Assn Bankruptcy (10cc / e-brief received 2/6/07). (GPK) |
| 02/07/2007 | MOTION by Proposed Amicus-Appellant Natl Assn Bankruptcy for leave to proceed as amicus curiae, filed. Answer due 2/20/07. Certificate of Service dated 2/6/07. (GPK) |
| 03/07/2007 | ELECTRONIC BRIEF on behalf of Appellee Nadejda Reilly, Copies: 1, Pages: 36, Word Count: 8,565, delivered by mail, filed. Certificate of service date 3/7/07. (LAL) |
| 03/08/2007 | HARD COPY RECEIVED of Brief from Appellee Nadejda Reilly, Copies: 10. (LAL) |
| 03/21/2007 | ELECTRONIC REPLY BRIEF on behalf of Appellant William G. Schwab. Copies: 1. Delivered by mail, filed. Certificate of service date 3/21/07. (GPK) |
| 03/22/2007 | HARD COPY RECEIVED from Appellant (10cc of reply). (GPK) |

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|---|---|
| 03/26/2007 | ORDER (Weis, Authoring Circuit Judge) granting motion by Proposed Amicus-Appellant National Association of Bankruptcy Trustees for leave to proceed as amicus curiae, filed. BCO-78 (GPK) |
| 03/26/2007 | ELECTRONIC AMICUS BRIEF on behalf of Amicus-Appellant Natl Assn Bankruptcy. Copies: 1, Pages: 18, Word Count: 3,504, delivered by mail, filed. Certificate of service date 2/6/07. (GPK) |
| 04/23/2007 | APPEARANCE from Attorney Martin P. Sheehan on behalf of Amicus-Appellant Natl Assn Bankruptcy, filed. (GPK) |
| 04/23/2007 | DISCLOSURE STATEMENT on behalf of Amicus-appellant Natl Assn Bankruptcy, filed. (GPK) |
| 07/09/2007 | APPEARANCE from Attorney William G. Schwab on behalf of Appellant, filed. (LWC) |
| 08/02/2007 | CALENDARED for Tuesday, November 6, 2007. (MAC) |
| 11/06/2007 | ARGUED Tuesday, November 6, 2007 Panel: Scirica, Chief Judge, Ambro and Jordan, Circuit Judges. Counsel for Appellant: William G. Schwab and Counsel for Appellee: Gino L. Andreuzzi (MAC) |
| 11/06/2007 | COURT RESPONSE REQUEST AT ORAL ARGUMENT. Both Counsel are to file 28(j) letters. Response due by 11/13/07. (MAC) |

| | |
|---|---|
| 11/09/2007 | ANSWER dated 11/6/07 received from William G. Schwab, Esq., counsel for Appellant submitting a 28(j) letter in direct response to the Court's request at oral argument, filed. (EH) |
| 11/13/2007 | ANSWER dated 11/8/07 received from Gino L. Andreuzzi, Esq., counsel for Appellee submitting a 28 (j) letter in direct response to the Court's request at oral argument, filed. (Please see letter for further information.) (EH) |
| 07/21/2008 | PRECEDENTIAL OPINION Coram: SCIRICA, AMBRO and JORDAN, Circuit Judges. Total Pages: 19. Judge: AMBRO Authoring (DMM) |
| 07/21/2008 | JUDGMENT, Affirmed with costs taxed against the Appellant., filed. (DMM) |
| 08/12/2008 | MANDATE ISSUED, filed. (DW) |
| 10/27/2008 | U.S. Supreme Court Notice. Petition for Writ of Certiorari filed by William G. Schwab on 10/20/2008. Supreme Court Case No. 08-538. (NB) |
| 04/29/2009 | NOTICE of U.S. Supreme Court disposition at No. 08-538. Petition for Writ of Certiorari filed by William G. Schwab granted on 04/27/2009. (CMD) |

**United States District Court**
**Middle District of Pennsylvania (Scranton)**
**CIVIL DOCKET FOR CASE #: 3:05-cv-02489-JMM**

| Date Filed | # | Docket Text |
|---|---|---|
| 12/06/2005 | 1 | Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 05-52187. Bankruptcy Judge Presiding Over Bankruptcy Case Judge John J Thomas. File received. Appellant Brief due by 12/21/2005. (BK Court W-B 1,) (Entered: 12/06/2005) |
| 12/06/2005 | 2 | DESIGNATED RECORD (BANKRUPTCY) by William G. Schwab re 1 Bankruptcy Appeal (Attachments: # 1 Voluntary Petition# 2 Copy of Docket# 3 Motion to Sell# 4 Order Granting# 5 Answer# 6 Brief in Support# 7 Brief# 8 PMO/Order Denying)(BK Court W-B 1,) (Entered: 12/06/2005) |
| 12/06/2005 | 3 | NOTICE OF BANKRUPTCY CASE APPEAL sent to counsel - Bankruptcy Court case number 5-05-52187. (tm) (Entered: 12/06/2005) |
| 12/19/2005 | 4 | Unopposed MOTION for Extension of Time to File Brief to 1 Bankruptcy Appeal filed by William G. Schwab. (Attachments: # 1 Proposed Order)(Christman, Jason) (Entered: 12/19/2005) |

| | | |
|---|---|---|
| 12/29/2005 | 5 | BANKRUPTCY COURT TRANSCRIPT of Proceedings held on 10/20/2005 (Public cannot view document.) (BK Court W-B 1,) (Entered: 12/29/2005) |
| 12/29/2005 | | Docket Annotation - Case assigned to Judge Munley. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | 6 | MOTION to Dismiss appeal by Nadejda Reilly. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | 7 | BRIEF IN OPPOSITION titled Answer to Motions re 6 MOTION to Dismiss filed by William G. Schwab. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | | RECEIPT OF APPEAL FILING FEE Receipt # 145090 in the amount of $255 paid by check. (kc,) (Entered: 12/29/2005) |
| 01/10/2006 | 8 | Appellant's BRIEF by William G. Schwab. Appellee Brief due by 1/25/2006. (Attachments: # 1 Exhibit(s) Daly Opinion)(Christman, Jason) (Entered: 01/10/2006) |
| 01/24/2006 | 9 | ORDER denying 6 debtor's Motion to Dismiss the appeal; the appellee shall file a brief in opposition to the appeal w/i 15 days of this order. Signed by Judge James M. Munley on 1/24/06 (sm,) (Entered: 01/24/2006) |
| 02/08/2006 | 10 | Appellee's BRIEF by Nadejda Reilly. (Andreuzzi, Gino) (Entered: 02/08/2006) |

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| 02/09/2006 | 11 | Appellee's BRIEF by Nadejda Reilly. (Andreuzzi, Gino) (Entered: 02/09/2006) |
| 02/21/2006 | 12 | Appellant's REPLY BRIEF by William G. Schwab. (Christman, Jason) (Entered: 02/21/2006) |
| 09/19/2006 | 13 | MEMORANDUM and ORDER DENYING appellant's bankruptcy appeal; Signed by Judge James M. Munley on 9/19/06. (sm,) (Entered: 09/19/2006) |
| 09/29/2006 | 15 | NOTICE OF APPEAL in NON-PRISONER Case as to 13 Order Dismissing Case by William G. Schwab. Filing Fee and Docket Fee PAID. Filing fee $ 455, receipt number 875547. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Christman, Jason) (Entered: 09/29/2006) |
| 09/29/2006 | | Doc #14 (Notice of Appeal) was deleted due to the notice of appeal being filed correctly with the fees as Doc #15. (jw,) (Entered: 09/29/2006) |

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| 10/04/2006 | 16 | Notice of Docketing USCA Case Number 06-4290 for 15 Notice of Appeal, filed by William G. Schwab,. USCA Case Manager LaToya W. Corprew (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF). (Corprew, Latoya) (Entered: 10/04/2006) |
| 07/21/2008 | 17 | JUDGMENT of USCA (certified copy) as to 15 Notice of Appeal, filed by William G. Schwab (Moore, Dana) (Entered: 07/21/2008) |
| 08/12/2008 | 18 | MANDATE of USCA as to 15 Notice of Appeal, filed by William G. Schwab (Attachments: # 1 Opinion)(White Banks, Desiree) (Entered: 08/12/2008) |

**U.S. Bankruptcy Court**
**Middle District of Pennsylvania (Wilkes-Barre)**
**Bankruptcy Petition #: 5:05-bk-52187-JJT**

| Filing Date | # | Docket Text |
|---|---|---|
| 04/21/2005 | 1 | Chapter 7 Voluntary Petition . Filing fee due in the amount of $ 209.00 Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly. (BS) (Entered: 04/21/2005) |
| 04/21/2005 | 2 | Matrix filed/Creditor List Uploaded Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 04/21/2005) |
| 04/22/2005 | | Receipt of Voluntary Petition Filing Fee, Chapter 7 - $209.00 Receipt Number: 00141442. (By CReg by JK) (RE: related document 1) (Entered: 04/25/2005) |
| 04/26/2005 | | Trustee William G Schwab (Trustee) added to case. *Hazleton.* (There is no image or paper document associated with this entry.) Filed by United States Trustee. (united states trustee(rm),) (Entered: 04/26/2005) |
| 04/27/2005 | | Tentative Date for Meeting of Creditors. THIS IS SUBJECT TO CHANGE. . 6/22/2005 at 01:30 PM. (PH) (Entered: 04/27/2005) |

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| 05/06/2005 | 3 | Amendment to Voluntary Petition to add (2) trade names Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 05/06/2005) |
| 05/24/2005 | 4 | Request to BNC - Meeting of Creditors . 341(a) meeting to be held on 6/22/2005 at 12:30 PM Hazleton City Hall, Council Chambers, 40 North Church Street, Hazleton, PA Last day to oppose discharge or dischargeability is 8/21/2005 (PH) (Entered: 05/24/2005) |
| 05/26/2005 | 5 | BNC Certificate of Mailing of 341 Meeting Notice (Chapter 7) (RE: related document(s) 4). Service Date 05/26/2005. (Admin.) (Entered: 05/27/2005) |
| 06/09/2005 | 6 | Amendment to Schedules: "F" & Mailing Matrix . Filing fee due in the amount of $ 26.00 Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 06/10/2005) |
| 06/10/2005 | | Receipt of Amendment to Creditor Matrix and Schedules (D, E and/or F) Filing Fee (Matrix + Scheds) - $26.00 Receipt Number: 00142138. (By CReg by BC) (RE: related documents 6) (Entered: 06/13/2005) |

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| 06/22/2005 | 7 | Certification that 341 Meeting of Creditors Held (Ch. 7) on 6/22/05. (There is no image or paper document associated with this entry.). (Schwab (Trustee), William) (Entered: 06/22/2005) |
| 06/29/2005 | 8 | Application to appoint himself/herself or their law firm as Attorney Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Certificate of Service) (schwab(md), William) (Entered: 06/29/2005) |
| 07/01/2005 | 9 | Motion to Dismiss Case Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1) . (BS)*No proposed Notice was sent with Motion to Dismiss Modified on 7/8/2005* (BS). (Entered: 07/05/2005) |
| 07/05/2005 | 10 | *Answer to Motion for Dismissal* Filed by Trustee (RE: related document(s) 9). (schwab(ps), William) (Entered: 07/05/2005) |
| 07/05/2005 | 11 | Certificate of Service *of Answer to Motion to Dismiss* Filed by Trustee (RE: related document(s) 9). (schwab(ps), William) (Entered: 07/05/2005) |

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| 07/08/2005 | 12 | Notice to Filing Party (Gino L Andreuzzi, Esq.): **The Proposed Notice was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the notice so it can be processed. **. (RE: related document(s) 9). (BS) (Entered: 07/08/2005) |
| 07/15/2005 | 13 | Notice sent to counsel (Gino L Andreuzzi, Esq.) for mailing. Pursuant to Local Bankruptcy Rules effective January 1, 2005, you are required to mail the attached Notice in accordance with the following instructions: (1) Date the Notice, list your name and address at the bottom and direct a copy to all creditors and parties-in-interest obtainable through the CM/ECF Utilities menu. Objection date is 20 days from the date you mail the notice. (2) File a **Certificate of Mailing (objection date)** with the Clerk's Office within three (3) days of the mailing, attaching a copy of the Notice and a list of creditors and parties-in-interest on whom it was served. (RE: related document(s) 9). (BS) (Entered: 07/15/2005) |
| 07/19/2005 | 14 | Order Granting Application of Trustee to appoint self as Attorney (RE: related document(s) 8). (BS) (Entered: 07/19/2005) |

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| 07/20/2005 | 15 | Certificate of mailing of notice sent by counsel Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 9). Objections due by 8/4/2005. (BS) (Entered: 07/20/2005) |
| 08/05/2005 | 16 | Order (RE: related document(s) 9). Hearing scheduled for 10/20/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (MPM) (Entered: 08/05/2005) |
| 08/10/2005 | 17 | Application to Employ Houser Auctioneers as Auctioneer Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Certificate of Service)(schwab(kg), William) (Entered: 08/10/2005) |
| 08/10/2005 | 18 | Motion to Sell *Personal Property Consisting of Restaurant Equipment, appliances and other miscellaneous items* Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Exhibit) (schwab(kg), William) (Entered: 08/10/2005) |
| 08/11/2005 | 19 | Request to BNC - Notice of Sale. (RE: related document(s) 18). Objections due by 9/2/2005. (BS) (Entered: 08/11/2005) |
| 08/13/2005 | 20 | BNC Certificate of Mailing. (RE: related document(s) 19). Service Date 08/13/2005. (Admin.) (Entered: 08/14/2005) |

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| 08/19/2005 | 21 | Order Granting Application to Employ Houser Auctioneers (RE: related document(s) 17). (BS) (Entered: 08/19/2005) |
| 09/02/2005 | 22 | Answer Filed by Gino L. Andreuzzi on behalf of Nadej da Reilly (RE: related document(s) 18). (BS) (Entered: 09/06/2005) |
| 09/06/2005 | 23 | Order (RE: related document(s) 18). Hearing scheduled for 9/22/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (BS) (Entered: 09/06/2005) |
| 09/14/2005 | 24 | Brief *in Support of Motion to Sell Personal Property at Public Sale* Filed by Trustee (RE: related document(s) 18, 22). (Attachments: # 1 Certificate of Service)(Wolfe, Michelle) (Entered: 09/14/2005) |
| 09/14/2005 | 25 | Proceeding Memo re hearing cancelled. Rescheduled at request of party *Motion of Trustee to Sell Personal Property*. (There is no image or paper document associated with this entry.) (RE: related document(s) 23, 18). Hearing scheduled for 10/20/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (AMG) (Entered: 09/14/2005) |

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| 09/14/2005 | 26 | FAX Correspondence Filed by William G Schwab of William G Schwab and Associates on behalf of William G Schwab confirming rescheduled hearing. (Trustee) (RE: related document(s) 25). (AMG) (Entered: 09/14/2005) |
| 10/20/2005 | 27 | Brief Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 18). (AMG) (Entered: 10/20/2005) |
| 10/20/2005 | 28 | Proceeding Memo re: Trustee's Motion to Sell Personal Property at Public Sale; record made. Order Denying Motion To Sell; property is deemed exempt. (RE: related document(s) 18). (AMG) (Entered: 10/20/2005) |
| 10/20/2005 | 29 | Proceeding Memo re: Debtor's Motion to Dismiss; record made. Order Denying Motion to Dismiss Case (RE: related document(s) 9). (AMG) (Entered: 10/20/2005) |
| 10/28/2005 | 30 | Request to BNC - Discharge of Debtor(s) (Admin.) (Entered: 10/28/2005) |
| 10/30/2005 | 31 | BNC Certificate of Mailing of Discharge (Chapter 7) (RE: related document(s) 30). Service Date 10/30/2005. (Admin.) (Entered: 10/31/2005) |

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| 10/31/2005 | 32 | Notice of Appeal of Order dated *October 31, 2005*. Filing fee due in the amount of $ 255.00 Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 28). Transmission to District Court of Designation(s) due by 11/30/2005. Appellant Designation due by 11/10/2005. (Attachments: # 1 Exhibit Order Subject to Appeal # 2 Certificate of Service)(Christman, Jason) (Entered: 10/31/2005) |
| 10/31/2005 | 33 | Corrective Entry *Appeal from Order dated October 20, 2005 (Appeal dated October 31, 2005)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). (Christman, Jason) (Entered: 10/31/2005) |
| 11/01/2005 | 34 | Order re: filing fee due in the amount of $ 255.00. (RE: related document(s) 32). Fee due on: 11/8/2005. (BS) (Entered: 11/01/2005) |
| 11/01/2005 | 35 | Correspondence re: Rule 8006 (RE: related document(s) 32). (BS) (Entered: 11/01/2005) |

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| 11/10/2005 | 36 | Appellant's Designation of Contents to be included in the record & *Statement of Issue Presented* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). Appellee designation due by 11/20/2005. (Attachments: # 1 Exhibit Items Number 2)(Christman, Jason) (Entered: 11/10/2005) |
| 11/15/2005 | 37 | Motion to dismiss Appeal Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 32). (BS) (Entered: 11/15/2005) |
| 11/15/2005 | 38 | Certificate of Mailing on Houser Auctioneers Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 30). (BS) (Entered: 11/15/2005) |
| 11/30/2005 | 39 | Answer *to Motion for Dismissal of Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 37). (Christman, Jason) (Entered: 11/30/2005) |
| 11/30/2005 | | Receipt of Notice of Appeal Filing Fee. Receipt Number 145090 Fee Amount $ 255. (RE: related document(s) 32, 34). (BS) (Entered: 11/30/2005) |

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| 12/06/2005 | 40 | Appeal filed with U.S. District Court. Civil Action Number: 3:05-cv-02489. Assigned to District Court Judge Unassigned at this time. Filed by William G Schwab of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). (BS) (Entered: 12/06/2005) |
| 12/09/2005 | 41 | Transcript of testimony of Hearing held 10/20/05 Filed by Transcript Company. (Transcripts Plus,) (Entered: 12/09/2005) |
| 12/09/2005 | 42 | Application for allowance of compensation & expenses Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1) . (Attachments: # 1 Proposed Order) (BS) (Entered: 12/13/2005) |
| 12/14/2005 | 43 | Order (RE: related documents) 42). Hearing scheduled for 1/19/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (BS) (Entered: 12/14/2005) |

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| 12/23/2005 | 44 | Objection to *Application for Fees of Gino L. Andreuzzi, Esquire* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 42). (Christman, Jason) Additional attachment(s) added on 1/23/2006 (BS). (Entered: 12/23/2005) |
| 01/05/2006 | 45 | Certificate of Mailing Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 43). (BS) (Entered: 01/05/2006) |
| 01/16/2006 | 46 | Corrective Entry *Corrected Objection to Application for Fees of Gino L. Andreuzzi, Esquire (Request for Relief & Case No.)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 44). (Christman, Jason) (Entered: 01/16/2006) |
| 01/17/2006 | 47 | Notice to Filing Party (Jason Zac Christman, Esq.): **Please docket a Corrective Entry *attaching a corrected pdf of the Objection to Application for Fees* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 46). (BS) (Entered: 01/17/2006) |

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| 01/20/2006 | 48 | Motion To Stay *Pending Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 28 , 32). (Attachments: # 1 Proposed Order) (Christman, Jason) (Entered: 01/20/2006) |
| 01/20/2006 | 49 | Corrective Entry: previous attachment omitted/incorrect/incomplete *Corrected Objection to Application for Fees of Gino L. Andreuzzi, Esquire (Request for Relief & Case No.)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 44 , 46 , 47). (Christman, Jason) (Entered: 01/20/2006) |
| 01/26/2006 | 50 | Order (RE: related document(s) 48). Hearing scheduled for 2/9/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 01/26/2006) |
| 01/26/2006 | 51 | Certificate of Mailing by Clerk's Office (RE: related document(s) 50). (BS) (Entered: 01/26/2006) |
| 01/27/2006 | 52 | Proceeding Memo/Order Approving Application for allowance of compensation and expenses. (RE: related document(s) 42). (AMG) (Entered: 01/27/2006) |

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| 02/07/2006 | 53 | Answer Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (Attachments: # 1 page 2# 2 page 3) (Andreuzzi, Gino) (Entered: 02/07/2006) |
| 02/08/2006 | 54 | Proceeding Memo re hearing cancelled. Rescheduled at request of party *Motion of Trustee for Stay Pending Appeal; rescheduled by Court.* (There is no image or paper document associated with this entry.) (RE: related document(s) 50 , 48). Hearing scheduled for 3/1/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (AMG) (Entered: 02/08/2006) |
| 03/01/2006 | 55 | Proceeding Memo re: Motion of Trustee for Stay Pending Appeal; no appearance for Debtor; record made. Order that Debtor is directed to retain property in question until further order of court or final disposition of appeal. (RE: related document(s) 48 , 50). (AMG) (Entered: 03/01/2006) |
| 03/04/2006 | 56 | Motion to Request Review Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (Attachments: # 1 Exhibit) (Andreuzzi, Gino) (Entered: 03/04/2006) |

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| 03/06/2006 | 57 | Notice to Filing Party (Gino Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. **. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). (BS) (Entered: 03/06/2006) |
| 03/07/2006 | 58 | Notice to Filing Party (Gino L. Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. *Email Received with no attached proposed order* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). (BS) (Entered: 03/07/2006) |
| 03/10/2006 | 59 | Request to BNC - Notice to Parties setting hearing (RE: related document(s) 56). Hearing scheduled for 4/11/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 03/10/2006) |
| 03/12/2006 | 60 | BNC Certificate of Mailing of Notice to Parties Setting Hearing. (RE: related document(s) 59). Service Date 03/12/2006. (Admin.) (Entered: 03/13/2006) |

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| 03/30/2006 | 61 | Motion to Continue : *Rescheduling of Hearing* Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly. (Attachments: # 1 Stipulation of Counsel) (Andreuzzi, Gino) (Entered: 03/30/2006) |
| 03/31/2006 | 62 | Notice to Filing Party (Gino Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. *E-mail was received, but the attachment was blank.* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 61). (BS) (Entered: 03/31/2006) |
| 04/04/2006 | 63 | Order Granting Motion To Continue (RE: related document(s) 56 , 61). Hearing scheduled for 5/16/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 04/04/2006) |
| 05/16/2006 | 64 | Brief *in Support of Motion for Stay Pending Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 48). (Attachments: # 1 Exhibit Brief in Support of Appeal) (Christman, Jason) (Entered: 05/16/2006) |

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| 05/16/2006 | 66 | Proceeding Memo record made. Matter taken under advisement. *Motion of Debtor for Review.* Appearances: Gino Andreuzzi, Esq; Jason Christman, Esq. Non-Appearances: N/A. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). Matter Under Advisement Due by 5/17/2006. (AMG) (Entered: 05/18/2006) |
| 05/17/2006 | 65 | Debtor's Brief in Support of answer to Trustee's Motion for Stay pending Appeal, Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (BS) (Entered: 05/17/2006) |
| 08/02/2006 | 67 | Opinion of the Court (RE: related document(s) 66 , 48). (CMS) (Entered: 08/02/2006) |
| 08/02/2006 | 68 | Order of the Court denying Trustee's Motion for Stay Pending Appeal. (RE: related document(s) 66 , 67 , 48). (CMS) (Entered: 08/02/2006) |
| 09/19/2006 | 69 | Final Order By District Court Judge James M. Munley, Re: Appeal on Civil Action Number: 3:05cv2489, AND NOW, to wit, this 19th day of September 2006, William G. Schwab's appeal of Chief Bankruptcy Judge John J. Thomas's order of October 20, 2005 is hereby DENIED. Filed by Clerks Office USDC (RE: related document(s) 32). (wmsl) (Entered: 09/19/2006) |

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| 11/01/2007 | 70 | Correspondence: re: Docket Sheets of District Court on matter appealed to the Third Circuit and given the Civil Number 06-4290 issued on 10/4/06 (RE: related document(s) 69). (RY) (Entered: 11/01/2007) |
| 08/12/2008 | 71 | Correspondence: decision of Third Circuit re: appeal (RE: related document(s) 70). (RCP) (Entered: 02/02/2009) |
| 02/13/2009 | 72 | Application to Employ Wilmer, Cutler, Pickering, Hale and Dorr, LLP as Special Appellate Counsel to the Trustee Filed by Trustee. (Attachments: # 1 Affidavit of Disinterestedness # 2 Proposed Order) (schwab(ea), William) (Entered: 02/13/2009) |
| 03/24/2009 | 73 | Order Granting Application to Employ Wilmer, Cutler, Pickering, Hale and Dorr, LLP as Special Appellate Counsel to the Trustee (RE: related document(s) 72). (RCP) (Entered: 03/24/2009) |
| 03/30/2009 | 74 | Notice of change to asset case: claims bar date set. Notice sent to all Creditors. Filed by Trustee. Proofs of Claims due by 6/30/2009. (schwab(ea), William) (Entered: 03/30/2009) |
| 04/02/2009 | 75 | BNC Certificate of Mailing of Notice setting claims bar date. (RE: related document(s) 74). Service Date 04/02/2009. (Admin.) (Entered: 04/03/2009) |
| 06/23/2009 | 76 | Request for Notice under 2002 Filed by eCAST Settlement Corporation. (Becket & Lee LLP) (Entered: 06/23/2009) |

(Official Form 1) (12/03)

| FORM B1 | United States Bankruptcy Court<br>Middle District of Pennsylvania | Voluntary Petition |
|---|---|---|
| Name of Debtor (if individual, enter Last, First, Middle):<br>**Reilly, Nadejda** | Name of Joint Debtor (Spouse) (Last, First, Middle): | |
| All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): | |
| Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all): **[redacted]** | Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all): | |
| Street Address of Debtor (No. & Street, City, State & Zip Code):<br>**[redacted]** | Street Address of Joint Debtor (No. & Street, City, State & Zip Code): | |
| County of Residence or of the Principal Place of Business: **Luzerne** | County of Residence or of the Principal Place of Business: | |

| Mailing Address of Debtor (if different from street address): | Mailing Address of Joint Debtor (if different from street address): |
|---|---|
| | |

| Location of Principal Assets of Business Debtor (if different from street address above): |
|---|
| |

**Information Regarding the Debtor**
**(Check the Applicable Boxes)**

**Venue** (Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

| **Type of Debtor** (Check all boxes that apply) | | **Chapter or Section of Bankruptcy Code Under Which the Petition is Filed** (Check one box) | |
|---|---|---|---|
| ☑ Individual(s) | ☐ Railroad | ☑ Chapter 7 | ☐ Chapter 11 |
| ☐ Corporation | ☐ Stockbroker | ☐ Chapter 9 | ☐ Chapter 12 |
| ☐ Partnership | ☐ Commodity Broker | ☐ Sec. 304 – Case ancillary to foreign proceeding | ☐ Chapter 13 |
| ☐ Other___ | ☐ Clearing Bank | | |

| **Nature of Debts** (Check one box) | **Filing Fee** (Check one box) |
|---|---|
| ☑ Consumer/Non-Business ☐ Business | ☑ Full Filing Fee attached |
| **Chapter 11 Small Business** (Check all boxes that apply)<br>☐ Debtor is small business as defined in 11 U.S.C. § 101<br>☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional) | ☐ Filing Fee to be paid in installments (applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3. |
| **Statistical/Administrative Information** (Estimates only)<br>☐ Debtor estimates that funds will be available for distribution to unsecured creditors.<br>☑ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. | THIS SPACE IS FOR COURT USE ONLY<br><br>RE 11:30<br><br>[Stamp: APR 21 2005<br>Clerk U.S. Bankruptcy Court] |
| Estimated Number of Creditors<br>☐ 1-15 ☑16-49 ☐ 50-99<br>☐ 100-199 ☐ 200-999<br>☐ 1000-over | |

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|---|---|
| Estimated Assets<br>☑ $0 to $50,000<br>☐ $50,001 to $100,000<br>☐ $100,001 to $500,000<br>☐ $500,001 to $1 million<br>☐ $1,000,001 to $10 million<br>☐ $10,000,001 to $50 million<br>☐ $50,000,001 to $100 million<br>☐ More than $100 million | |
| Estimated Debts<br>☐ $0 to $50,000<br>☑ $50,001 to $100,000<br>☐ $100,001 to $500,000<br>☐ $500,001 to $1 million<br>☐ $1,000,001 to $10 million<br>☐ $10,000,001 to $50 million<br>☐ $50,000,001 to $100 million<br>☐ More than $100 million | |

| **Voluntary Petition**<br>*(This page must be completed and filed in every case)* | Name of Debtor(s):<br>**Reilly, Nadejda** | |
|---|---|---|
| **Prior Bankruptcy Case Filed Within Last 6 Years** (If more than one, attach additional sheet) | | |
| Location<br>Where Filed: **None** | Case Number: | Date Filed: |
| **Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor** (If more than one, attach additional sheet) | | |
| Name of Debtor:<br>**None** | Case Number: | Date Filed: |
| District: | Relationship: | Judge: |

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under Chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United State Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Nadejda Reilly

Signature of Debtor **Nadejda Reilly**

X _____

Signature of Joint Debtor

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

| | |
|---|---|
| Telephone Number (if not represented by attorney)<br>April 15, 2005<br>Date | X /s/ G L Andreuzzi<br>Signature of Attorney for Debtor(s) Date 4/15/05 |
| **Signature of Attorney**<br>X /s/ G L Andreuzzi<br>Signature of Attorney for Debtor(s)<br>Gino L. Andreuzzi 23140<br>Printed Name of Attorney for Debtor(s)<br>Attorney Gino L. Andreuzzi<br>First Name<br>85 Drasher Rd., Ste II<br>Address<br>Drums, PA 18222<br>(570) 788-5373<br>Telephone Number | **Exhibit C**<br>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?<br>☐ Yes, and Exhibit C is attached and made a part of this petition.<br>☑ No<br>**Signature of Non-Attorney Petition Preparer**<br>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. |

| | |
|---|---|
| | _____<br>Printed Name of Bankruptcy Petition Preparer<br>_____<br>Social Security Number (Required by 11 U.S.C. § 110(c)).<br>_____<br>Address<br>_____<br>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:<br>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.<br>X _____<br>Signature of Bankruptcy Petition Preparer |

| | |
|---|---|
| | Date<br>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156. |

VOLUNTARY PETITION

United States Bankruptcy Court
Middle District of Pennsylvania

IN RE: Case No. _____
Reilly, Nadejda Chapter 7
Debtor(s)

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

| | | | AMOUNTS SCHEDULED | | |
|---|---|---|---|---|---|
| NAME OF SCHEDULE | ATTACHED (YES/NO) | NUMBER OF SHEETS | ASSETS | LIABILITIES | OTHER |
| A - Real Property | Yes | 1 | 0.00 | | |
| B - Personal Property | Yes | 2 | 29,268.92 | | |
| C - Property Claimed as Exempt | Yes | 1 | | | |

| | | | | | |
|---|---|---|---|---|---|
| D - Creditors Holding Secured Claims | Yes | 1 | | 11,000.00 | |
| E - Creditors Holding Unsecured Priority Claims | Yes | 1 | | 0.00 | |
| F - Creditors Holding Unsecured Nonpriority Claims | Yes | 5 | | 40,381.92 | |
| G - Executory Contracts and Unexpired Leases | Yes | 1 | | | |
| H - Codebtors | Yes | 1 | | | |
| I - Current Income of Individual Debtor(s) | Yes | 1 | | | 3,396.00 |

| | | | | | |
|---|---|---|---|---|---|
| J - Current Expenditures of Individual Debtor(s) | Yes | 1 | | | 4,390.00 |
| Total Number of Sheets in Schedules | | 15 | | | |
| | | | Total Assets | 29,268.92 | |
| | | | | Total Liabilities | 51,381.92 |

SUMMARY OF SCHEDULES

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC." If the debtor holds no interest in real property, write "None" under "Description and Location of Property".

Do not include interests in executory contracts and unexpired leases on the schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a security interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim".

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

| DESCRIPTION AND LOCATION OF PROPERTY | NATURE OF DEBTOR'S INTEREST IN PROPERTY | H<br>W<br>J<br>C | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION | AMOUNT OF SECURED CLAIM |
|---|---|---|---|---|
| None | | | | |
| | | **TOTAL** | **0.00** | |

(Report also on Summary of Schedules)

SCHEDULE A - REAL PROPERTY

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attached a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions only in Schedule C - Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on the schedule. List them in Schedule G - Executory Contracts and Unexpired Leased.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property".

| TYPE OF PROPERTY | NONE | DESCRIPTION AND LOCATION OF PROPERTY | HWJC | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION |
|---|---|---|---|---|
| 1. Cash on hand. | X | | | |
| 2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, bro- | | **Account no. [redacted], business account at PNC Bank, Hazleton, PA. Name on account, Fine European Catering.**<br>**Personal checking account of debtor with PNC Bank, Hazleton, PA acct. no. [redacted]** | | **21.00**<br>**5.00** |

| | | | | |
|---|---|---|---|---|
| kerage houses, or cooperatives. | | | | |
| 3. Security deposits with public utilities, telephone companies, landlords, and others. | X | | | |
| 4. Household goods and furnishings, include audio, video, and computer equipment. | X | | | |
| 5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles. | | **Pictures, camera, other personal property for child.** | | **1,000.00** |

| | | | | |
|---|---|---|---|---|
| 6. Wearing apparel. | | Clothing. | | 1,000.00 |
| 7. Furs and jewelry. | | Jewelry | | 100.00 |
| 8. Firearms and sports, photographic, and other hobby equipment. | X | | | |
| 9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. | X | | | |
| 10. Annuities. Itemize and name each issue. | X | | | |
| 11. Interests in IRA, ERISA, Keogh, or | | Pension fund with International Union Industry. | | 57.92 |

| | | | | |
|---|---|---|---|---|
| other pension or profit sharing plans. Itemize. | | | | |
| 12. Stock and interests in incorporated and unincorporated businesses. Itemize. | X | | | |
| 13. Interests in partnerships or joint ventures. Itemize. | X | | | |
| 14. Government and corporate bonds and other negotiable and non-negotiable instruments. | X | | | |
| 15. Accounts receiv- | X | | | |

| | | | | |
|---|---|---|---|---|
| able. | | | | |
| 16. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars. | X | | | |
| 17. Other liquidated debts owing debtor including tax refunds. Give particulars. | X | | | |

SCHEDULE B - PERSONAL PROPERTY

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE B - PERSONAL PROPERTY
## (Continuation Sheet)

| TYPE OF PROPERTY | NONE | DESCRIPTION AND LOCATION OF PROPERTY | HWJC | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION |
|---|---|---|---|---|
| 18. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| than those listed in Schedule of Real Property. | | | | | |
| 19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. | X | | | | |
| 20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated | X | | | | |

| | | | | |
|---|---|---|---|---|
| value of each. | | | | |
| 21. Patents, copyrights, and other intellectual property. Give particulars. | X | | | |
| 22. Licenses, franchises, and other general intangibles. Give particulars. | X | | | |
| 23. Automobiles, trucks, trailers, and other vehicles and accessories. | | **02 Honda CRV, V.I.N. JHLRD78802C058760, title holder, American Honda Finance Corp., 470 Granby Rd., Ste. 2, S. Hadley, MA 01075.** | | **13,367.00** |
| 24. Boats, motors, and accessories. | X | | | |
| 25. Aircraft and accessories. | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| 26. Office equipment, furnishings, and supplies. | X | | | | |
| 27. Machinery, fixtures, equipment, and supplies used in business. | | See attached list of business equipment. | | 10,718.00 | |
| 28. Inventory. | | Food goods on hand at restaurant of the debtor | | 3,000.00 | |
| 29. Animals. | X | | | | |
| 30. Crops - growing or harvested. Give particulars. | X | | | | |
| 31. Farming equipment and implements. | X | | | | |
| 32. Farm supplies, chemicals, and feed. | X | | | | |

| | | | | |
|---|---|---|---|---|
| 33. Other personal property of any kind not already listed. Itemize. | X | | | |
| | | | **TOTAL** | **29,268.92** |

0 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

SCHEDULE B - PERSONAL PROPERTY

Schedule B, attachment in answer to question 27 of the preceeding. Reilly.

[handwritten]

TWO WORLDS BY FINE EUROPEAN CATERING
AT
RT 93 SUITE #3
BROOKHILL CENTER
P.O. BOX 382
CONYNGHAM PA 18219
(570)-788-1088



EQUIPMENT: Tax is not included.

| | | | Paid | Today's Market Value |
|---|---|---|---|---|
| 1 | Coffee maker<br>Airpot Brewer | 1 New | $545.00 | $250.00 |
| 2 | Soup Warmers<br>Anvil (Black & Stainless steel) | 2 New | $270.00 | $100.00 |
| 3 | 3 Bay sink | 1 Used | $350.00 | $100.00 |

| | | | | |
|---|---|---|---|---|
| 4 | Handwashing sink | 1 Used | Free | Free |
| 5 | Microwave oven<br>Quasar | 1 Used | $120.00 | $25.00 |
| 6 | Sandwich Grill<br>Star Pane Belle Grooved New | 1 New | $1,897.40 | $950.00 |
| 7 | Hot Plate | 1 New | $378.00 | $150.00 |
| 8 | Convection Oven<br>single deck - US Range | 1 New | $2,225.00<br>$200.00 | $1,000.00<br>$100.00 |

# AMICUS CURIAE BRIEF

Supreme Court, U.S.
FILED
NOV 24 2008
OFFICE OF THE CLERK

No. 08-538

# In The Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
TRUSTEE FOR NADEJDA REILLY,

*Petitioner,*

v.

NADEJDA REILLY,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

## BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES IN SUPPORT OF PETITIONER

Martin P. Sheehan
*Counsel of Record*
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth Street
Wheeling, West Virginia 26003
(304) 232-1064

*Counsel for Amicus Curiae*
*National Association of*
*Bankruptcy Trustees*

*November 24, 2008*

THE LEX GROUP DC • 1750 K Street N.W. • Suite 475 • Washington, DC 20006
(202) 955-0001 • (800) 815-3791 • Fax: (202) 955-0022 • www.thelexgroupdc.com

**Motion for Leave to File a Brief of Amicus Curiae National Association of Bankruptcy Trustees in Support of Petitioner Pursuant to Rule 37.3**

On October 29, 2008 the undersigned gave notice to the parties of the intent of the National Association of Bankruptcy Trustees to file a brief of Amicus Curiae in Support of Petitioner. Consent to file the brief has been received from the Petitioner. The Respondent has not responded to the request.

The National Association of Bankruptcy Trustees is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.

## Questions Presented

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003, even though the amount claimed as exempt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress' exclusive power to legislate in the field of bankruptcy when it created unlimited "in kind" exemptions where the statute contains specific dollar-value limitations?

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## Interest of the Amicus Curiae

The Amicus Curiae, is the National Association of Bankruptcy Trustees. NABT is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.[1]

## Statement of Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## Statutory and Rule Provisions

**11 U.S.C. § 522(d)**

The following property may be exempted under subsection (b)(2) of this section:

---

[1] No other person or entity, except for the amicus curiae, their members and their counsel, made a monetary contribution to the preparation and submission of this brief.

(1) The debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $800 plus up to $7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability,

death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless -

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

**11 U.S.C. § 522(l)**

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

**Federal Rule of Bankruptcy Procedure 1007.** Lists, Schedules and Statements; Time Limits

. . . .

(b) Schedules and statements required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

**Federal Rule of Bankruptcy Procedure 4003**

Exemptions

(a) Claim of exemptions.

A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objections to claim of exemptions.

A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof.

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property.

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

## Summary of the Argument

Schedules filed in bankruptcy cases are filed following the format established in Official Form 6 promulgated by the Judicial Conference of the United States as contemplated by the Federal Rules of Bankruptcy Procedure. These forms require a debtor to provide discrete information. The Schedules implement various requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

The Bankruptcy Code permits debtors to exempt some property subject to discrete dollar limitations. When those limits are the same as the value of an asset as reported by a debtor, there is no

reason to believe that the asset was rendered fully exempt, aside from an argument that hinges on a misreading of Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). While there are time limits to object to exemptions, there is no time limit for a trustee to object to the scheduled value of an asset. None should be implied.

This issue is a recurring one around the nation. There is a split among the Courts of Appeals. In addition, the reasoning and outcome of the instant case results from a failure to consider the actual language of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

## Reasons for Granting the Petition for Certiorari

### I. Introduction

In asking this Court to review the instant case, the Petition for a Writ of Certiorari has focused on the conflict present in decisions of the United States Courts of Appeal on the questions herein presented. The Courts of Appeal for the Third, and Eleventh Circuits have recognized exemptions in excess of statutory limits when the scheduled value of an asset and the dollar value of the exemption claimed are the same. Schwab v. Reilly (In re: Reilly) 534 F.3d 173 (3d Cir. 2008); and Allen v. Green (In re: Green), 31 F.3d 1098 (1994). See also, Olson v. Anderson (In re: Anderson), 377 B.R. 865 (6th Cir. BAP 2007) This view has been rejected in the Courts of Appeals for the Eighth and Ninth Circuits. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8th Cir. 2002) and Hyman v. Plotkin (In re: Plotkin), 967 F.2d 1316 (9th Cir. 1992). No consensus has emerged.

The issues here recur in many bankruptcy cases. The issues involve understanding the meaning of information placed on bankruptcy schedules whose format is the subject of an Official Form approved by the Judicial Conference of the United States. The United States Court of Appeals for the Third Circuit determined in this case that reading the information provided on those forms by the debtor using a plain meaning approach to be flawed.

The amicus curiae, the National Association of Bankruptcy Trustees, share the concerns of the Petitioner about the conflict between the Courts of Appeal. NABT files this brief to emphasize the importance of the questions presented to the administration of the bankruptcy laws.

Bankruptcy cases are initiated by the filing of bankruptcy petitions to which numerous bankruptcy schedules are attached. The schedules require detailed financial information in a format established in Official Forms promulgated by the Judicial Conference of the United States as authorized by the Federal Rules of Bankruptcy Procedure.

Included in the Official Forms are forms pertaining to the disclosure of assets, their value, claims of exemptions, and the value of the exemptions claimed. Where exemptions established by statute contain specific dollar limitations, the schedule of the value of exemptions should objectively always be understood to claim the value of the dollar exemption so expressed as the exemption claimed.

The value of the asset reported on bankruptcy schedules by a debtor represents the debtor's opinion of value of the asset, but such value should have no impact on the understanding of what has been claimed exempt. To the extent that the value of the asset reported by a debtor has been considered by the lower courts as part the claim of exemptions, such an approach represents a misunderstanding of a prior decision of this Court in Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). That misunderstanding encourages a departure from the accepted and usual course of judicial proceedings such that this Court should review this issue. Because the lower courts have become seriously divided on the proper approach to the understanding of what bankruptcy schedules mean, this Court should hear the instant case and resolve the conflict by reference to the underlying statutory scheme, specifically the Bankruptcy Code, as consistently augmented by the Federal Bankruptcy Rules of Procedure and the Official Forms.

## II. The Statutory Scheme

When an individual files for bankruptcy relief a bankruptcy estate is created. The estate consists of the property described in 11 U.S.C. § 541. Generally, all the assets of a debtor, whether real, personal, tangible, intangible, fixed or contingent, become assets of the estate. The estate can grow in the event property is recovered for the benefit of the estate.

To permit a debtor to have something with which to restart economic life, Congress has provided that a debtor may exempt property

described in 11 U.S.C. § 522. Debtors may choose to exempt property under provisions of state law, or under a scheme provided in the Bankruptcy Code. Nadejda Reilly claimed exemptions pursuant to the Bankruptcy Code, specifically under 11 U.S.C. § 522(d).

The Code permits the exemption of specific forms of property in different ways. Some specific forms of property may retained regardless of value. For example, professionally prescribed health aids may be retained without regard to value. 11 U.S.C. § 522(d)(9). Such property is generally said to be exempt "in kind."

Some specific forms of property may be exempt subject to discrete limitations on value. Vehicles, exempt up to a value of $2,950[2], under 11 U.S.C. § 522(d)(2); jewelry, exempt up to a value of $ 1,225, under 11 U.S.C. § 522(d)(4); and, tools of the trade, exempt up to a value of $1,850 under 11 U.S.C. § 522(d)(6); are examples of specific forms of property exemptions with dollar limitations.

A third type of exemption permits exemption of specific forms of property subject to a flexible limitation. A payment of alimony or support, for

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[2] All of the dollar limitations in 11 U.S.C. § 522 are indexed pursuant to the provisions 11 U.S.C. § 104. That provision causes the dollar limits to change on April 1 of every third year. The debtor, Ms. Reilly filed for bankruptcy on April 21, 2005. The amounts were adjusted upward once since that time, on April 1, 2007. The amounts in effect at the filing of the instant case continue to apply throughout a case per 11 U.S.C. § 104(c). Consequently those values have been used herein.

example, may be exempted in an amount "reasonably necessary for the support of a debtor or a dependent of the debtor.

Finally, the Bankruptcy Code provides a "wild card" or "catchall" exemption in 11 U.S.C. § 522(d)(5). This provision permits a debtor to exempt the aggregate interest in any property having a value of at least $975, plus $9,250, of the unused portion of a larger exemption provided for a residence in 11 U.S.C. § 522(d)(1).

It is the exemption of certain restaurant equipment by the debtor that is at issue here. The debtor reported the equipment had a "value" of $10,718. She claimed part of the restaurant equipment having a value $1,850 was exempt under the "tools of the trade" exemption. She also used an exemption under the "wildcard" provision to claim $8,868 of the restaurant equipment as exempt. These amounts $1,850 and $8,868, total, $10,718, the value of the property as reported by the debtor.

## III. The Exemption Process

As part of the filing process a debtor must file a "list of creditors" and a "schedule of assets and liabilities." 11 U.S.C. § 521(a). A debtor must file "a list of property" that the debtor claims exempt pursuant to 11 U.S.C. § 522. Neither the word list or property is further defined in the Bankruptcy Code.

The Federal Rules of Bankruptcy Procedure do provide additional instruction about the schedule of assets, and the list of exemptions. Federal Rule of

Bankruptcy Procedure 1007(b)(1) requires a "schedule of assets and liabilities" as prescribed by the Official Forms. Federal Rule of Bankruptcy Procedure 4003 requires a debtor to "list the property" claimed as exempt on the schedule of assets required by Rule 1007. Federal Rule of Bankruptcy Procedure 9009 provides for Official Forms to be prescribed by the Judicial Conference and that said forms are to be construed to be consistent with the rules and the Code.

Official Form 6 prescribed a series of Schedules. Schedule A required a debtor to list real property. Schedule B required a debtor to list personal property. Schedule C required a debtor to set forth any claim that property is exempt.

Schedule A and B required a debtor to set forth a description of property and its location in a columnar format. In 2005, one of the additional columns on each schedule was titled "current market value of debtor's interest in property, without deducting any secured claim or exemptions.[3]" Schedule C required a similar format, although the location of the property need not be repeated. Schedule C did require a debtor to report "value of the claimed exemption" in one column and "current market value of property without deducting exemption[4]" in another.

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[3] The word "market" was deleted by an amendment to the Official Form made between 2005 and 2008.

[4] The word "market" was deleted by an amendment to the Official Form made between 2005 and 2008, on this form as well.

Had their been a creditor with a secured claim against this kind of property, the amount of any secured claim would have been reported on Schedule B. The identity of the creditor, the property subject to the lien, the value of the property and the amount of the lien would have been required to be listed on Schedule D of the petition.

## IV. Two Views of the Bankruptcy Schedules

The debtor claims that she listed the restaurant equipment as an asset on Schedule B. As part of Schedule B, and again on Schedule C, Ms. Reilly asserts she listed the current market value of the property at $10,718. On Schedule C, she asserts she claimed exemptions of a like amount, using the tools of the trade and the catchall exemptions. She then asserts she has exempted all of the restaurant equipment and that because the trustee did not file a timely objection to the exemption, the bankruptcy estate has no further interest in the restaurant equipment.

The trustee on the other hand reasons that when he read Schedule C as filed by the debtor, he understood from a plain reading of the schedules that the debtor had claimed an exemption in restaurant equipment having a value of $10,718. He knew that such an amount could be lawfully claimed as exempt under the statutes described by the debtor. He did not believe he could object that her claim of exemption was in any way incorrect.

For example, he had learned the debtor was a cook and had been running a restaurant. Her use of the tools of the trade exemption to the extent available for restaurant equipment was unobjectionable. Her use of the catchall exemption was for an amount lawfully available to her under that section was similarly unchallengeable. See, In re: Heflin, 215 B.R. 530 (Bankr. W.D. Mich. 1997).

The trustee did deny that Bankruptcy Rule 4003 obligated him to dispute the claimed market value of the property within the time limits prescribed in that Rule. The trustee moved to sell the restaurant equipment which he had come to believe was worth approximately $18,000 to $20,000. Had he been permitted to do so, the trustee would have distributed $10,718 to the debtor in satisfaction of her exemption claim, paid the expenses of sale, and distributed the surplus to creditors.

## V. The Meaning of Property in Sections 522(d) and 522(l)

In 11 U.S.C. § 522(d) the statute describes what may be exempt as "[t]he debtor's aggregate interest, not to exceed $ [a stated dollar amount] in value in ....[various described property]. This language is used in subsection 1 for residential property, in subsection 2 for a motor vehicle, in subsection 3 for household goods, in subsection 4 for jewelry, in subsection 5 for any property, in subsection 6 for tools of the trade, and in subsection 8 for the cash surrender value of life insurance policies. These are repeated dollar limitations on

exemption in a particular kinds of property. This language contrasts with the way unlimited exemptions on unmatured life insurance contracts, and prescription health aids in subsections 7 and 9 were defined.

Section 522(l) of the Bankruptcy Code provides that a debtor shall "file a list of exempt property that the debtor claims as exempt...." This section does not say the debtor must list "the value of the exemption claimed in" the property claimed as exempt, although clearly value is an important limitation on many exemptions provided by Congress. The phrase identified here as having been omitted appears to be implied component of property when that term is use in subsection 522(l).

Implying the missing phrase, does cause a subtle shift in the meaning of the word property. Although often the same word in the same section should have the same meaning, the subtle shift is explained in the different purposes of the different subsections. For Congress to speak with particularity about the aggregate value of property as part of its description of discrete exemptions, but omit that precision when describing an obligation to file a list of exempt property is not surprising. Depending on the context, property is a word that can fairly encompass both the notion of property as an item or the value of an item. In re: Cormier, 382 B.R. 377, 396-97 (Bankr. W.D. Mich. 2008)

The alternative, avoiding this shift as part of statutory construction, would imply that listing any property as exempt would make it fully exempt.

Clearly this would render all the limitations on exemptions meaningless. That construction is more improbable. In creating the Official Forms, the Advisory Committee seemed to recognize the need for this kind of shifting interpretation of exempt property. Schedule C of Official Form 6 requires a debtor to describe the property and to set forth the "value of the claimed exemption."

## VI. The Impact of Taylor v. Freeland and Kronz

The debtor has apparently recognized that an effort to pursue a statutory interpretation of section 522(l) would be foolhardy and has not made this claim overtly. Still this is the essence of the claim being made in this litigation. The debtor asserts that the value of her claimed exemption was $10,718. Despite having made such a report as part of Schedule C, she subsequently asserted that she had really claimed an exemption, not available to her overtly, of a 100% interest in restaurant equipment. Had she said so overtly, the trustee would have known of her improvident claim, and would have known her claim of exemption was not supported by statute. In re: Einkhorn, 330 B.R. 570 (Bankr. E.D. Mich. 2005). The failure of the trustee to deduce her intent, the debtor insists, was the fault of the trustee.

An argument like this can only be the result of attempting to apply a discussion from a Court decision that was not intended to address the issue at hand. That is exactly what has happened here. In Taylor v. Freeland and Kronz, 503 U.S. 638 (1992) the Supreme Court granted certiorari to determine if

a trustee who had failed to object to an exemption within the time limit established in Federal Rule of Bankruptcy Procedure 4003, could object to an exemption to which a debtor had no colorable basis after the 30 day period had expired. In Taylor, this Court said that all objections had to be filed within the time period prescribed for objections.

Taylor arose in a factually odd case. The debtor had reported the value of an ongoing lawsuit as "unknown." Her schedule of exemptions described the exemption as proceeds from lawsuit and also described the value as "unknown." The trustee made a timely inquiry into the lawsuits potential and had apparently been accurately informed that a settlement of $110,000 was optimistic, but conceivable. Thereafter, the trustee appears to have done very little. Significantly, he did not object to the exemption, as poorly stated as it was. The litigation did settle for $110,000 and the trustee sought to administer the proceeds. His failure to file a timely objection was held fatal to his effort to do so.

One of the oddities about Taylor should be noted. The value of the lawsuit and the exemption were given as "unknown" in Taylor. This is unusual. Despite this language, the Supreme Court described the property as fully exempt. Either the parties agreed it had been fully exempted, or this Court may have decided that the description of the property, " proceeds of lawsuit" justified interpreting the list of exempt property as fully exempting all of the proceeds of the lawsuit. Trustees have reacted accordingly since. When unknown appears as the value of an exemption, trustees do routinely object to

such claims. Taylor's notion that deadlines lead to certainty has impacted the decision to object to poorly described exemptions, as well.

However what has made Taylor such a large part of the discussion on the instant question, arises from some language in the majority opinion. Noting that the trustee was bound by the deadlines of Federal Bankruptcy Rule of Procedure 4003, the opinion of the Court made the following observation:

> If Taylor did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b).

Id. at ____. This phraseology has led some lower courts to find that the value of the property claimed exempt is part of the process of objecting to exemptions. Some lower courts, including the Court of Appeals for the Third Circuit in this case, have concluded that where the market value of property reported by the debtor and the value of the exemption claimed by the debtor is equal in amount, the Schedules should be construed as reflecting an intent by the debtor to exempt the full value of the asset, and that the asset is fully exempt unless objected to by the trustee within the time period set forth by Rule 4003. Some courts have gone further and held that where the market value reported by a debtor, less the amount of the secured claim as reported by the debtor, i.e. the reported equity,

equals the amount claimed exempt, then the property is fully exempt.

The National Association of Bankruptcy Trustees, the amicus curiae here, contests the inevitability of these conclusions about Taylor. The reference to the "value of potential proceeds of the lawsuit" can be understood both as the value of the property and the value of the claimed exemption. If there was an issue about the value of the claimed exemption, certainly the process described in Rule 4003(c) would provide a method for determining that amount. Rule 4003 does not imply any reason for examination of the value of the property. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8th Cir. 2001); In re: DeSoto, 181 B.R. 704, 708 (Bankr. D. Conn. 1995). Courts which have performed such an analysis are wrong. Zupansic v. Hyman (In re: Zupansic), 259 B.R. 388, 391 n.3 (Bankr. M.D. Fla. 2001).

Where dollar values are attributed to exemptions, the exemptions should be determined objectively by the amount claimed. The debtor's opinion of the value of the debtor's property is not logically a factor to be considered in at all as part of the exemption process. To the extent that the lower courts have suggested it should be, there is no support in the language of the Code, the Rules or the Official Forms for such a view. Notes of the Advisory Committee relevant to the change in the Official Form which deleted the word "market," as a modifier for value as part of Schedule A, B and C, since 2005

actually undercuts reliance on what value is even being reported.[5]

## Conclusion

The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Official Forms all impact how information is presented in filings. One might assume that the detail required by Code, the Rules and the Official Forms would establish an objective standard by which this information might be understood. Yet, the disagreement between the litigants here about the meaning of what has been reported on the bankruptcy schedules is not an isolated dispute. As reflected in the cases discussed below, the Courts of Appeals, and the lower courts, are spending an inordinate amount of time on something as fundamental as the meaning of information reported on bankruptcy schedules. This Court has the ability to provide fixed guidance about how to complete and how to read a bankruptcy petition. Explaining this simple, but fundamental, concept in the instant case would be of significant value to the bankruptcy community. This is the critical reason why the instant case should be heard by this Court.

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[5] In Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997) this Court found value for some purposes under the Bankruptcy Code to be "replacement value."

Respectfully submitted,

National Association of Bankruptcy Trustees,

/s/

*Counsel of Record*
Martin P. Sheehan
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth St.
Wheeling, WV 26003
(304) 232-1064
Fax (304) 232-1066
*Attorneys for the Amicus Curiae*
*National Association of Bankruptcy Trustees*

# JOINT APPENDIX

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No. 08-538

Supreme Court, U.S.
FILED
JUL 10 2009
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner,*

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## JOINT APPENDIX

G. ERIC BRUNSTAD, JR.
*Counsel of Record*
COLLIN O'CONNOR UDELL
MATTHEW J. DELUDE
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

*Counsel for Respondent*

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
LESLIE S. GARTHWAITE
NATHAN A. BRUGGEMAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

*Counsel for Petitioner*

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

PETITION FOR CERTIORARI FILED OCTOBER 20, 2008
CERTIORARI GRANTED APRIL 27, 2009

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GINO L. ANDREUZZI
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

*Counsel for Respondent*

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB &
ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS,
MISHKIN, CORVELEYN,
WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

*Counsel for Petitioner*

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**General Docket**
**Third Circuit Court of Appeals**
**Court of Appeals Docket #: 06-4290**

| | |
|---|---|
| 10/04/2006 | Bankruptcy Case Docketed. Notice filed by William G. Schwab. (LWC) |
| 10/04/2006 | RECORD available on District Court CM/ECF. (LWC) |
| 10/16/2006 | APPEARANCE from Attorney Jason Z. Christman on behalf of Appellant, filed. (LWC) |
| 10/16/2006 | (POSITIVE) DISCLOSURE STATEMENT on behalf of Appellant, filed. (LWC) |
| 10/16/2006 | INFORMATION STATEMENT on behalf of Appellant, received. (LWC) |
| 10/16/2006 | CONCISE SUMMARY OF CASE on behalf of Appellant, received. (LWC) |
| 10/18/2006 | FOLLOW UP LETTER to Gino L. Andreuzzi requesting the following documents: **Appearance Form **Disclosure Statement (LWC) |
| 11/06/2006 | APPEARANCE from Attorney Gino L. Andreuzzi on behalf of Appellee Nadejda Reilly, filed. (LWC) |
| 11/06/2006 | DISCLOSURE STATEMENT on behalf of Appellee Nadejda Reilly, filed. (LWC) |
| 12/26/2006 | BRIEFING NOTICE ISSUED. Appellant's brief and appendix due 2/5/07. (LWC) |

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|---|---|
| 02/02/2007 | ELECTRONIC BRIEF on behalf of Appellant William G. Schwab, Copies: 1, Pages: 22, delivered by mail, filed. Certificate of service date 2/2/07. (GPK) |
| 02/05/2007 | HARD COPY RECEIVED from Appellant William G. Schwab (10cc w/ vol 1 of appendix attached). (GPK) |
| 02/05/2007 | APPENDIX on behalf of Appellant William G. Schwab. Copies: 4, Volumes: 2 (vol 1 attached to Hard Copy of Brief), Delivered by mail, filed. Certificate of service date 2/2/07. (GPK) |
| 02/07/2007 | HARD COPY RECEIVED from Proposed Amicus-Appellant Natl Assn Bankruptcy (10cc / e-brief received 2/6/07). (GPK) |
| 02/07/2007 | MOTION by Proposed Amicus-Appellant Natl Assn Bankruptcy for leave to proceed as amicus curiae, filed. Answer due 2/20/07. Certificate of Service dated 2/6/07. (GPK) |
| 03/07/2007 | ELECTRONIC BRIEF on behalf of Appellee Nadejda Reilly, Copies: 1, Pages: 36, Word Count: 8,565, delivered by mail, filed. Certificate of service date 3/7/07. (LAL) |
| 03/08/2007 | HARD COPY RECEIVED of Brief from Appellee Nadejda Reilly, Copies: 10. (LAL) |
| 03/21/2007 | ELECTRONIC REPLY BRIEF on behalf of Appellant William G. Schwab. Copies: 1. Delivered by mail, filed. Certificate of service date 3/21/07. (GPK) |
| 03/22/2007 | HARD COPY RECEIVED from Appellant (10cc of reply). (GPK) |

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| 03/26/2007 | ORDER (Weis, Authoring Circuit Judge) granting motion by Proposed Amicus-Appellant National Association of Bankruptcy Trustees for leave to proceed as amicus curiae, filed. BCO-78 (GPK) |
| 03/26/2007 | ELECTRONIC AMICUS BRIEF on behalf of Amicus-Appellant Natl Assn Bankruptcy. Copies: 1, Pages: 18, Word Count: 3,504, delivered by mail, filed. Certificate of service date 2/6/07. (GPK) |
| 04/23/2007 | APPEARANCE from Attorney Martin P. Sheehan on behalf of Amicus-Appellant Natl Assn Bankruptcy, filed. (GPK) |
| 04/23/2007 | DISCLOSURE STATEMENT on behalf of Amicus-appellant Natl Assn Bankruptcy, filed. (GPK) |
| 07/09/2007 | APPEARANCE from Attorney William G. Schwab on behalf of Appellant, filed. (LWC) |
| 08/02/2007 | CALENDARED for Tuesday, November 6, 2007. (MAC) |
| 11/06/2007 | ARGUED Tuesday, November 6, 2007 Panel: Scirica, Chief Judge, Ambro and Jordan, Circuit Judges. Counsel for Appellant: William G. Schwab and Counsel for Appellee: Gino L. Andreuzzi (MAC) |
| 11/06/2007 | COURT RESPONSE REQUEST AT ORAL ARGUMENT. Both Counsel are to file 28(j) letters. Response due by 11/13/07. (MAC) |

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| 11/09/2007 | ANSWER dated 11/6/07 received from William G. Schwab, Esq., counsel for Appellant submitting a 28(j) letter in direct response to the Court's request at oral argument, filed. (EH) |
| 11/13/2007 | ANSWER dated 11/8/07 received from Gino L. Andreuzzi, Esq., counsel for Appellee submitting a 28 (j) letter in direct response to the Court's request at oral argument, filed. (Please see letter for further information.) (EH) |
| 07/21/2008 | PRECEDENTIAL OPINION Coram: SCIRICA, AMBRO and JORDAN, Circuit Judges. Total Pages: 19. Judge: AMBRO Authoring (DMM) |
| 07/21/2008 | JUDGMENT, Affirmed with costs taxed against the Appellant., filed. (DMM) |
| 08/12/2008 | MANDATE ISSUED, filed. (DW) |
| 10/27/2008 | U.S. Supreme Court Notice. Petition for Writ of Certiorari filed by William G. Schwab on 10/20/2008. Supreme Court Case No. 08-538. (NB) |
| 04/29/2009 | NOTICE of U.S. Supreme Court disposition at No. 08-538. Petition for Writ of Certiorari filed by William G. Schwab granted on 04/27/2009. (CMD) |

**United States District Court**
**Middle District of Pennsylvania (Scranton)**
**CIVIL DOCKET FOR CASE #: 3:05-cv-02489-JMM**

| Date Filed | # | Docket Text |
|---|---|---|
| 12/06/2005 | 1 | Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 05-52187. Bankruptcy Judge Presiding Over Bankruptcy Case Judge John J Thomas. File received. Appellant Brief due by 12/21/2005. (BK Court W-B 1,) (Entered: 12/06/2005) |
| 12/06/2005 | 2 | DESIGNATED RECORD (BANKRUPTCY) by William G. Schwab re 1 Bankruptcy Appeal (Attachments: # 1 Voluntary Petition# 2 Copy of Docket# 3 Motion to Sell# 4 Order Granting# 5 Answer# 6 Brief in Support# 7 Brief# 8 PMO/Order Denying)(BK Court W-B 1,) (Entered: 12/06/2005) |
| 12/06/2005 | 3 | NOTICE OF BANKRUPTCY CASE APPEAL sent to counsel - Bankruptcy Court case number 5-05-52187. (tm) (Entered: 12/06/2005) |
| 12/19/2005 | 4 | Unopposed MOTION for Extension of Time to File Brief to 1 Bankruptcy Appeal filed by William G. Schwab. (Attachments: # 1 Proposed Order)(Christman, Jason) (Entered: 12/19/2005) |

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|---|---|---|
| 12/29/2005 | 5 | BANKRUPTCY COURT TRANSCRIPT of Proceedings held on 10/20/2005 (Public cannot view document.) (BK Court W-B 1,) (Entered: 12/29/2005) |
| 12/29/2005 | | Docket Annotation - Case assigned to Judge Munley. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | 6 | MOTION to Dismiss appeal by Nadejda Reilly. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | 7 | BRIEF IN OPPOSITION titled Answer to Motions re 6 MOTION to Dismiss filed by William G. Schwab. (kc,) (Entered: 12/29/2005) |
| 12/29/2005 | | RECEIPT OF APPEAL FILING FEE Receipt # 145090 in the amount of $255 paid by check. (kc,) (Entered: 12/29/2005) |
| 01/10/2006 | 8 | Appellant's BRIEF by William G. Schwab. Appellee Brief due by 1/25/2006. (Attachments: # 1 Exhibit(s) Daly Opinion)(Christman, Jason) (Entered: 01/10/2006) |
| 01/24/2006 | 9 | ORDER denying 6 debtor's Motion to Dismiss the appeal; the appellee shall file a brief in opposition to the appeal w/i 15 days of this order. Signed by Judge James M. Munley on 1/24/06 (sm,) (Entered: 01/24/2006) |
| 02/08/2006 | 10 | Appellee's BRIEF by Nadejda Reilly. (Andreuzzi, Gino) (Entered: 02/08/2006) |

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| 02/09/2006 | 11 | Appellee's BRIEF by Nadejda Reilly. (Andreuzzi, Gino) (Entered: 02/09/2006) |
| 02/21/2006 | 12 | Appellant's REPLY BRIEF by William G. Schwab. (Christman, Jason) (Entered: 02/21/2006) |
| 09/19/2006 | 13 | MEMORANDUM and ORDER DENYING appellant's bankruptcy appeal; Signed by Judge James M. Munley on 9/19/06. (sm,) (Entered: 09/19/2006) |
| 09/29/2006 | 15 | NOTICE OF APPEAL in NON-PRISONER Case as to 13 Order Dismissing Case by William G. Schwab. Filing Fee and Docket Fee PAID. Filing fee $ 455, receipt number 875547. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Christman, Jason) (Entered: 09/29/2006) |
| 09/29/2006 | | Doc #14 (Notice of Appeal) was deleted due to the notice of appeal being filed correctly with the fees as Doc #15. (jw,) (Entered: 09/29/2006) |

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|---|---|---|
| 10/04/2006 | 16 | Notice of Docketing USCA Case Number 06-4290 for 15 Notice of Appeal, filed by William G. Schwab,. USCA Case Manager LaToya W. Corprew (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF). (Corprew, Latoya) (Entered: 10/04/2006) |
| 07/21/2008 | 17 | JUDGMENT of USCA (certified copy) as to 15 Notice of Appeal, filed by William G. Schwab (Moore, Dana) (Entered: 07/21/2008) |
| 08/12/2008 | 18 | MANDATE of USCA as to 15 Notice of Appeal, filed by William G. Schwab (Attachments: # 1 Opinion)(White Banks, Desiree) (Entered: 08/12/2008) |

**U.S. Bankruptcy Court**
**Middle District of Pennsylvania (Wilkes-Barre)**
**Bankruptcy Petition #: 5:05-bk-52187-JJT**

| Filing Date | # | Docket Text |
|---|---|---|
| 04/21/2005 | 1 | Chapter 7 Voluntary Petition . Filing fee due in the amount of $ 209.00 Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly. (BS) (Entered: 04/21/2005) |
| 04/21/2005 | 2 | Matrix filed/Creditor List Uploaded Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 04/21/2005) |
| 04/22/2005 | | Receipt of Voluntary Petition Filing Fee, Chapter 7 - $209.00 Receipt Number: 00141442. (By CReg by JK) (RE: related document 1) (Entered: 04/25/2005) |
| 04/26/2005 | | Trustee William G Schwab (Trustee) added to case. *Hazleton.* (There is no image or paper document associated with this entry.) Filed by United States Trustee. (united states trustee(rm),) (Entered: 04/26/2005) |
| 04/27/2005 | | Tentative Date for Meeting of Creditors. THIS IS SUBJECT TO CHANGE. . 6/22/2005 at 01:30 PM. (PH) (Entered: 04/27/2005) |

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| 05/06/2005 | 3 | Amendment to Voluntary Petition to add (2) trade names Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 05/06/2005) |
| 05/24/2005 | 4 | Request to BNC - Meeting of Creditors . 341(a) meeting to be held on 6/22/2005 at 12:30 PM Hazleton City Hall, Council Chambers, 40 North Church Street, Hazleton, PA Last day to oppose discharge or dischargeability is 8/21/2005 (PH) (Entered: 05/24/2005) |
| 05/26/2005 | 5 | BNC Certificate of Mailing of 341 Meeting Notice (Chapter 7) (RE: related document(s) 4). Service Date 05/26/2005. (Admin.) (Entered: 05/27/2005) |
| 06/09/2005 | 6 | Amendment to Schedules: "F" & Mailing Matrix . Filing fee due in the amount of $ 26.00 Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1). (BS) (Entered: 06/10/2005) |
| 06/10/2005 | | Receipt of Amendment to Creditor Matrix and Schedules (D, E and/or F) Filing Fee (Matrix + Scheds) - $26.00 Receipt Number: 00142138. (By CReg by BC) (RE: related documents 6) (Entered: 06/13/2005) |

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| 06/22/2005 | 7 | Certification that 341 Meeting of Creditors Held (Ch. 7) on 6/22/05. (There is no image or paper document associated with this entry.). (Schwab (Trustee), William) (Entered: 06/22/2005) |
| 06/29/2005 | 8 | Application to appoint himself/herself or their law firm as Attorney Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Certificate of Service) (schwab(md), William) (Entered: 06/29/2005) |
| 07/01/2005 | 9 | Motion to Dismiss Case Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1) . (BS)*No proposed Notice was sent with Motion to Dismiss Modified on 7/8/2005* (BS). (Entered: 07/05/2005) |
| 07/05/2005 | 10 | *Answer to Motion for Dismissal* Filed by Trustee (RE: related document(s) 9). (schwab(ps), William) (Entered: 07/05/2005) |
| 07/05/2005 | 11 | Certificate of Service *of Answer to Motion to Dismiss* Filed by Trustee (RE: related document(s) 9). (schwab(ps), William) (Entered: 07/05/2005) |

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| 07/08/2005 | 12 | Notice to Filing Party (Gino L Andreuzzi, Esq.): **The Proposed Notice was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the notice so it can be processed. **. (RE: related document(s) 9). (BS) (Entered: 07/08/2005) |
| 07/15/2005 | 13 | Notice sent to counsel (Gino L Andreuzzi, Esq.) for mailing. Pursuant to Local Bankruptcy Rules effective January 1, 2005, you are required to mail the attached Notice in accordance with the following instructions: (1) Date the Notice, list your name and address at the bottom and direct a copy to all creditors and parties-in-interest obtainable through the CM/ECF Utilities menu. Objection date is 20 days from the date you mail the notice. (2) File a **Certificate of Mailing (objection date)** with the Clerk's Office within three (3) days of the mailing, attaching a copy of the Notice and a list of creditors and parties-in-interest on whom it was served. (RE: related document(s) 9). (BS) (Entered: 07/15/2005) |
| 07/19/2005 | 14 | Order Granting Application of Trustee to appoint self as Attorney (RE: related document(s) 8). (BS) (Entered: 07/19/2005) |

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| 07/20/2005 | 15 | Certificate of mailing of notice sent by counsel Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 9). Objections due by 8/4/2005. (BS) (Entered: 07/20/2005) |
| 08/05/2005 | 16 | Order (RE: related document(s) 9). Hearing scheduled for 10/20/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (MPM) (Entered: 08/05/2005) |
| 08/10/2005 | 17 | Application to Employ Houser Auctioneers as Auctioneer Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Certificate of Service)(schwab(kg), William) (Entered: 08/10/2005) |
| 08/10/2005 | 18 | Motion to Sell *Personal Property Consisting of Restaurant Equipment, appliances and other miscellaneous items* Filed by Trustee. (Attachments: # 1 Proposed Order # 2 Exhibit) (schwab(kg), William) (Entered: 08/10/2005) |
| 08/11/2005 | 19 | Request to BNC - Notice of Sale. (RE: related document(s) 18). Objections due by 9/2/2005. (BS) (Entered: 08/11/2005) |
| 08/13/2005 | 20 | BNC Certificate of Mailing. (RE: related document(s) 19). Service Date 08/13/2005. (Admin.) (Entered: 08/14/2005) |

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| 08/19/2005 | 21 | Order Granting Application to Employ Houser Auctioneers (RE: related document(s) 17). (BS) (Entered: 08/19/2005) |
| 09/02/2005 | 22 | Answer Filed by Gino L. Andreuzzi on behalf of Nadej da Reilly (RE: related document(s) 18). (BS) (Entered: 09/06/2005) |
| 09/06/2005 | 23 | Order (RE: related document(s) 18). Hearing scheduled for 9/22/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (BS) (Entered: 09/06/2005) |
| 09/14/2005 | 24 | Brief *in Support of Motion to Sell Personal Property at Public Sale* Filed by Trustee (RE: related document(s) 18, 22). (Attachments: # 1 Certificate of Service)(Wolfe, Michelle) (Entered: 09/14/2005) |
| 09/14/2005 | 25 | Proceeding Memo re hearing cancelled. Rescheduled at request of party *Motion of Trustee to Sell Personal Property*. (There is no image or paper document associated with this entry.) (RE: related document(s) 23, 18). Hearing scheduled for 10/20/2005 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (AMG) (Entered: 09/14/2005) |

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| 09/14/2005 | 26 | FAX Correspondence Filed by William G Schwab of William G Schwab and Associates on behalf of William G Schwab confirming rescheduled hearing. (Trustee) (RE: related document(s) 25). (AMG) (Entered: 09/14/2005) |
| 10/20/2005 | 27 | Brief Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 18). (AMG) (Entered: 10/20/2005) |
| 10/20/2005 | 28 | Proceeding Memo re: Trustee's Motion to Sell Personal Property at Public Sale; record made. Order Denying Motion To Sell; property is deemed exempt. (RE: related document(s) 18). (AMG) (Entered: 10/20/2005) |
| 10/20/2005 | 29 | Proceeding Memo re: Debtor's Motion to Dismiss; record made. Order Denying Motion to Dismiss Case (RE: related document(s) 9). (AMG) (Entered: 10/20/2005) |
| 10/28/2005 | 30 | Request to BNC - Discharge of Debtor(s) (Admin.) (Entered: 10/28/2005) |
| 10/30/2005 | 31 | BNC Certificate of Mailing of Discharge (Chapter 7) (RE: related document(s) 30). Service Date 10/30/2005. (Admin.) (Entered: 10/31/2005) |

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| 10/31/2005 | 32 | Notice of Appeal of Order dated *October 31, 2005*. Filing fee due in the amount of $ 255.00 Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 28). Transmission to District Court of Designation(s) due by 11/30/2005. Appellant Designation due by 11/10/2005. (Attachments: # 1 Exhibit Order Subject to Appeal # 2 Certificate of Service)(Christman, Jason) (Entered: 10/31/2005) |
| 10/31/2005 | 33 | Corrective Entry *Appeal from Order dated October 20, 2005 (Appeal dated October 31, 2005)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). (Christman, Jason) (Entered: 10/31/2005) |
| 11/01/2005 | 34 | Order re: filing fee due in the amount of $ 255.00. (RE: related document(s) 32). Fee due on: 11/8/2005. (BS) (Entered: 11/01/2005) |
| 11/01/2005 | 35 | Correspondence re: Rule 8006 (RE: related document(s) 32). (BS) (Entered: 11/01/2005) |

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| 11/10/2005 | 36 | Appellant's Designation of Contents to be included in the record & *Statement of Issue Presented* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). Appellee designation due by 11/20/2005. (Attachments: # 1 Exhibit Items Number 2)(Christman, Jason) (Entered: 11/10/2005) |
| 11/15/2005 | 37 | Motion to dismiss Appeal Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 32). (BS) (Entered: 11/15/2005) |
| 11/15/2005 | 38 | Certificate of Mailing on Houser Auctioneers Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 30). (BS) (Entered: 11/15/2005) |
| 11/30/2005 | 39 | Answer *to Motion for Dismissal of Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 37). (Christman, Jason) (Entered: 11/30/2005) |
| 11/30/2005 | | Receipt of Notice of Appeal Filing Fee. Receipt Number 145090 Fee Amount $ 255. (RE: related document(s) 32, 34). (BS) (Entered: 11/30/2005) |

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| 12/06/2005 | 40 | Appeal filed with U.S. District Court. Civil Action Number: 3:05-cv-02489. Assigned to District Court Judge Unassigned at this time. Filed by William G Schwab of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 32). (BS) (Entered: 12/06/2005) |
| 12/09/2005 | 41 | Transcript of testimony of Hearing held 10/20/05 Filed by Transcript Company. (Transcripts Plus,) (Entered: 12/09/2005) |
| 12/09/2005 | 42 | Application for allowance of compensation & expenses Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 1) . (Attachments: # 1 Proposed Order) (BS) (Entered: 12/13/2005) |
| 12/14/2005 | 43 | Order (RE: related documents) 42). Hearing scheduled for 1/19/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (BS) (Entered: 12/14/2005) |

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| 12/23/2005 | 44 | Objection to *Application for Fees of Gino L. Andreuzzi, Esquire* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 42). (Christman, Jason) Additional attachment(s) added on 1/23/2006 (BS). (Entered: 12/23/2005) |
| 01/05/2006 | 45 | Certificate of Mailing Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 43). (BS) (Entered: 01/05/2006) |
| 01/16/2006 | 46 | Corrective Entry *Corrected Objection to Application for Fees of Gino L. Andreuzzi, Esquire (Request for Relief & Case No.)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 44). (Christman, Jason) (Entered: 01/16/2006) |
| 01/17/2006 | 47 | Notice to Filing Party (Jason Zac Christman, Esq.): **Please docket a Corrective Entry *attaching a corrected pdf of the Objection to Application for Fees* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 46). (BS) (Entered: 01/17/2006) |

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| 01/20/2006 | 48 | Motion To Stay *Pending Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 28 , 32). (Attachments: # 1 Proposed Order) (Christman, Jason) (Entered: 01/20/2006) |
| 01/20/2006 | 49 | Corrective Entry: previous attachment omitted/incorrect/incompiete *Corrected Objection to Application for Fees of Gino L. Andreuzzi, Esquire (Request for Relief & Case No.)* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 44 , 46 , 47). (Christman, Jason) (Entered: 01/20/2006) |
| 01/26/2006 | 50 | Order (RE: related document(s) 48). Hearing scheduled for 2/9/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 01/26/2006) |
| 01/26/2006 | 51 | Certificate of Mailing by Clerk's Office (RE: related document(s) 50). (BS) (Entered: 01/26/2006) |
| 01/27/2006 | 52 | Proceeding Memo/Order Approving Application for allowance of compensation and expenses. (RE: related document(s) 42). (AMG) (Entered: 01/27/2006) |

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| 02/07/2006 | 53 | Answer Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (Attachments: # 1 page 2# 2 page 3) (Andreuzzi, Gino) (Entered: 02/07/2006) |
| 02/08/2006 | 54 | Proceeding Memo re hearing cancelled. Rescheduled at request of party *Motion of Trustee for Stay Pending Appeal; rescheduled by Court.* (There is no image or paper document associated with this entry.) (RE: related document(s) 50 , 48). Hearing scheduled for 3/1/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (AMG) (Entered: 02/08/2006) |
| 03/01/2006 | 55 | Proceeding Memo re: Motion of Trustee for Stay Pending Appeal; no appearance for Debtor; record made. Order that Debtor is directed to retain property in question until further order of court or final disposition of appeal. (RE: related document(s) 48 , 50). (AMG) (Entered: 03/01/2006) |
| 03/04/2006 | 56 | Motion to Request Review Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (Attachments: # 1 Exhibit) (Andreuzzi, Gino) (Entered: 03/04/2006) |

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| 03/06/2006 | 57 | Notice to Filing Party (Gino Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. **. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). (BS) (Entered: 03/06/2006) |
| 03/07/2006 | 58 | Notice to Filing Party (Gino L. Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. *Email Received with no attached proposed order* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). (BS) (Entered: 03/07/2006) |
| 03/10/2006 | 59 | Request to BNC - Notice to Parties setting hearing (RE: related document(s) 56). Hearing scheduled for 4/11/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 03/10/2006) |
| 03/12/2006 | 60 | BNC Certificate of Mailing of Notice to Parties Setting Hearing. (RE: related document(s) 59). Service Date 03/12/2006. (Admin.) (Entered: 03/13/2006) |

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| 03/30/2006 | 61 | Motion to Continue : *Rescheduling of Hearing* Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly. (Attachments: # 1 Stipulation of Counsel) (Andreuzzi, Gino) (Entered: 03/30/2006) |
| 03/31/2006 | 62 | Notice to Filing Party (Gino Andreuzzi, Esq): **The Proposed Order was NOT e-mailed to the Court in accordance with the Administrative Procedures. Please e-mail the order so it can be presented to the Judge. *E-mail was received, but the attachment was blank.* **. (There is no image or paper document associated with this entry.) (RE: related document(s) 61). (BS) (Entered: 03/31/2006) |
| 04/04/2006 | 63 | Order Granting Motion To Continue (RE: related document(s) 56 , 61). Hearing scheduled for 5/16/2006 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (BS) (Entered: 04/04/2006) |
| 05/16/2006 | 64 | Brief *in Support of Motion for Stay Pending Appeal* Filed by Jason Zac Christman of William G Schwab and Associates on behalf of William G Schwab (Trustee) (RE: related document(s) 48). (Attachments: # 1 Exhibit Brief in Support of Appeal) (Christman, Jason) (Entered: 05/16/2006) |

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| 05/16/2006 | 66 | Proceeding Memo record made. Matter taken under advisement. *Motion of Debtor for Review.* Appearances: Gino Andreuzzi, Esq; Jason Christman, Esq. Non-Appearances: N/A. (There is no image or paper document associated with this entry.) (RE: related document(s) 56). Matter Under Advisement Due by 5/17/2006. (AMG) (Entered: 05/18/2006) |
| 05/17/2006 | 65 | Debtor's Brief in Support of answer to Trustee's Motion for Stay pending Appeal, Filed by Gino L. Andreuzzi on behalf of Nadejda Reilly (RE: related document(s) 48). (BS) (Entered: 05/17/2006) |
| 08/02/2006 | 67 | Opinion of the Court (RE: related document(s) 66 , 48). (CMS) (Entered: 08/02/2006) |
| 08/02/2006 | 68 | Order of the Court denying Trustee's Motion for Stay Pending Appeal. (RE: related document(s) 66 , 67 , 48). (CMS) (Entered: 08/02/2006) |
| 09/19/2006 | 69 | Final Order By District Court Judge James M. Munley, Re: Appeal on Civil Action Number: 3:05cv2489, AND NOW, to wit, this 19th day of September 2006, William G. Schwab's appeal of Chief Bankruptcy Judge John J. Thomas's order of October 20, 2005 is hereby DENIED. Filed by Clerks Office USDC (RE: related document(s) 32). (wmsl) (Entered: 09/19/2006) |

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| 11/01/2007 | 70 | Correspondence: re: Docket Sheets of District Court on matter appealed to the Third Circuit and given the Civil Number 06-4290 issued on 10/4/06 (RE: related document(s) 69). (RY) (Entered: 11/01/2007) |
| 08/12/2008 | 71 | Correspondence: decision of Third Circuit re: appeal (RE: related document(s) 70). (RCP) (Entered: 02/02/2009) |
| 02/13/2009 | 72 | Application to Employ Wilmer, Cutler, Pickering, Hale and Dorr, LLP as Special Appellate Counsel to the Trustee Filed by Trustee. (Attachments: # 1 Affidavit of Disinterestedness # 2 Proposed Order) (schwab(ea), William) (Entered: 02/13/2009) |
| 03/24/2009 | 73 | Order Granting Application to Employ Wilmer, Cutler, Pickering, Hale and Dorr, LLP as Special Appellate Counsel to the Trustee (RE: related document(s) 72). (RCP) (Entered: 03/24/2009) |
| 03/30/2009 | 74 | Notice of change to asset case: claims bar date set. Notice sent to all Creditors. Filed by Trustee. Proofs of Claims due by 6/30/2009. (schwab(ea), William) (Entered: 03/30/2009) |
| 04/02/2009 | 75 | BNC Certificate of Mailing of Notice setting claims bar date. (RE: related document(s) 74). Service Date 04/02/2009. (Admin.) (Entered: 04/03/2009) |
| 06/23/2009 | 76 | Request for Notice under 2002 Filed by eCAST Settlement Corporation. (Becket & Lee LLP) (Entered: 06/23/2009) |

(Official Form 1) (12/03)

| FORM B1 | United States Bankruptcy Court<br>Middle District of Pennsylvania | Voluntary Petition |
|---|---|---|
| Name of Debtor (if individual, enter Last, First, Middle):<br>**Reilly, Nadejda** | Name of Joint Debtor (Spouse) (Last, First, Middle): | |
| All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): | |
| Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all): **[redacted]** | Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all): | |
| Street Address of Debtor (No. & Street, City, State & Zip Code):<br>**[redacted]** | Street Address of Joint Debtor (No. & Street, City, State & Zip Code): | |
| County of Residence or of the Principal Place of Business: **Luzerne** | County of Residence or of the Principal Place of Business: | |

| Mailing Address of Debtor (if different from street address): | Mailing Address of Joint Debtor (if different from street address): |
|---|---|
| | |

Location of Principal Assets of Business Debtor
(if different from street address above):

**Information Regarding the Debtor**
**(Check the Applicable Boxes)**

**Venue** (Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

| **Type of Debtor** (Check all boxes that apply) | | **Chapter or Section of Bankruptcy Code Under Which the Petition is Filed** (Check one box) | |
|---|---|---|---|
| ☑ Individual(s) | ☐ Railroad | ☑ Chapter 7 | ☐ Chapter 11 |
| ☐ Corporation | ☐ Stockbroker | ☐ Chapter 9 | ☐ Chapter 12 |
| ☐ Partnership | ☐ Commodity Broker | ☐ Sec. 304 – Case ancillary to foreign proceeding | ☐ Chapter 13 |
| ☐ Other___ | ☐ Clearing Bank | | |

| **Nature of Debts** (Check one box) | **Filing Fee** (Check one box) |
|---|---|
| ☑ Consumer/Non-Business ☐ Business | ☑ Full Filing Fee attached |
| **Chapter 11 Small Business** (Check all boxes that apply)<br>☐ Debtor is small business as defined in 11 U.S.C. § 101<br>☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional) | ☐ Filing Fee to be paid in installments (applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3. |
| **Statistical/Administrative Information** (Estimates only)<br>☐ Debtor estimates that funds will be available for distribution to unsecured creditors.<br>☑ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. | THIS SPACE IS FOR COURT USE ONLY<br>RE 11:30<br>[Stamp: APR 21 2005<br>Clerk U.S. Bankruptcy Court] |
| Estimated Number of Creditors<br>☐ 1-15 ☑16-49 ☐ 50-99<br>☐ 100-199 ☐ 200-999<br>☐ 1000-over | |

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|---|---|
| Estimated Assets<br>☑ $0 to $50,000<br>☐ $50,001 to $100,000<br>☐ $100,001 to $500,000<br>☐ $500,001 to $1 million<br>☐ $1,000,001 to $10 million<br>☐ $10,000,001 to $50 million<br>☐ $50,000,001 to $100 million<br>☐ More than $100 million | |
| Estimated Debts<br>☐ $0 to $50,000<br>☑ $50,001 to $100,000<br>☐ $100,001 to $500,000<br>☐ $500,001 to $1 million<br>☐ $1,000,001 to $10 million<br>☐ $10,000,001 to $50 million<br>☐ $50,000,001 to $100 million<br>☐ More than $100 million | |

| **Voluntary Petition**<br>*(This page must be completed and filed in every case)* | Name of Debtor(s):<br>**Reilly, Nadejda** | |
|---|---|---|
| **Prior Bankruptcy Case Filed Within Last 6 Years** (If more than one, attach additional sheet) | | |
| Location<br>Where Filed: **None** | Case Number: | Date Filed: |
| **Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor** (If more than one, attach additional sheet) | | |
| Name of Debtor:<br>**None** | Case Number: | Date Filed: |
| District: | Relationship: | Judge: |

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under Chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United State Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Nadejda Reilly

Signature of Debtor **Nadejda Reilly**

X _____

Signature of Joint Debtor

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

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|---|---|
| Telephone Number (if not represented by attorney)<br>April 15, 2005<br>Date | X/s/ G L Andreuzzi 4/15/05<br>Signature of Attorney for Debtor(s) Date |
| **Signature of Attorney**<br>X /s/ G L Andreuzzi<br>Signature of Attorney for Debtor(s)<br>Gino L. Andreuzzi 23140<br>Printed Name of Attorney for Debtor(s)<br>Attorney Gino L. Andreuzzi<br>First Name<br>85 Drasher Rd., Ste II<br>Address<br>Drums, PA 18222<br>(570) 788-5373<br>Telephone Number | **Exhibit C**<br>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?<br>☐ Yes, and Exhibit C is attached and made a part of this petition.<br>☑ No<br>**Signature of Non-Attorney Petition Preparer**<br>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. |

| | |
|---|---|
| | _____<br>Printed Name of Bankruptcy Petition Preparer<br>_____<br>Social Security Number (Required by 11 U.S.C. § 110(c)).<br>_____<br>Address<br>_____<br>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:<br>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.<br>X _____<br>Signature of Bankruptcy Petition Preparer |

| | |
|---|---|
| | Date<br>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156. |

VOLUNTARY PETITION

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

IN RE:
Reilly, Nadejda
Debtor(s)

Case No. _____
Chapter 7

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

| NAME OF SCHEDULE | ATTACHED (YES/NO) | NUMBER OF SHEETS | AMOUNTS SCHEDULED ASSETS | LIABILITIES | OTHER |
|---|---|---|---|---|---|
| A - Real Property | Yes | 1 | 0.00 | | |
| B - Personal Property | Yes | 2 | 29,268.92 | | |
| C - Property Claimed as Exempt | Yes | 1 | | | |

| | | | | | |
|---|---|---|---|---|---|
| D - Creditors Holding Secured Claims | Yes | 1 | | 11,000.00 | |
| E - Creditors Holding Unsecured Priority Claims | Yes | 1 | | 0.00 | |
| F - Creditors Holding Unsecured Nonpriority Claims | Yes | 5 | | 40,381.92 | |
| G - Executory Contracts and Unexpired Leases | Yes | 1 | | | |
| H - Codebtors | Yes | 1 | | | |
| I - Current Income of Individual Debtor(s) | Yes | 1 | | | 3,396.00 |

| | | | | | |
|---|---|---|---|---|---|
| J - Current Expenditures of Individual Debtor(s) | Yes | 1 | | | 4,390.00 |
| Total Number of Sheets in Schedules | | 15 | | | |
| | | | Total Assets | 29,268.92 | |
| | | | | Total Liabilities | 51,381.92 |

SUMMARY OF SCHEDULES

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC." If the debtor holds no interest in real property, write "None" under "Description and Location of Property".

Do not include interests in executory contracts and unexpired leases on the schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a security interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim".

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

| DESCRIPTION AND LOCATION OF PROPERTY | NATURE OF DEBTOR'S INTEREST IN PROPERTY | H<br>W<br>J<br>C | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION | AMOUNT OF SECURED CLAIM |
|---|---|---|---|---|
| None | | | | |
| | | **TOTAL** | **0.00** | |

(Report also on Summary of Schedules)

SCHEDULE A - REAL PROPERTY

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attached a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions only in Schedule C - Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on the schedule. List them in Schedule G - Executory Contracts and Unexpired Leased.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property".

| TYPE OF PROPERTY | NONE | DESCRIPTION AND LOCATION OF PROPERTY | HWJC | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION |
|---|---|---|---|---|
| 1. Cash on hand. | X | | | |
| 2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, bro- | | **Account no. [redacted], business account at PNC Bank, Hazleton, PA. Name on account, Fine European Catering.**<br>**Personal checking account of debtor with PNC Bank, Hazleton, PA acct. no. [redacted]** | | **21.00**<br>**5.00** |

| | | | | |
|---|---|---|---|---|
| kerage houses, or cooperatives. | | | | |
| 3. Security deposits with public utilities, telephone companies, landlords, and others. | X | | | |
| 4. Household goods and furnishings, include audio, video, and computer equipment. | X | | | |
| 5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles. | | **Pictures, camera, other personal property for child.** | | **1,000.00** |

| | | | | |
|---|---|---|---|---|
| 6. Wearing apparel. | | Clothing. | | 1,000.00 |
| 7. Furs and jewelry. | | Jewelry | | 100.00 |
| 8. Firearms and sports, photographic, and other hobby equipment. | X | | | |
| 9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. | X | | | |
| 10. Annuities. Itemize and name each issue. | X | | | |
| 11. Interests in IRA, ERISA, Keogh, or | | Pension fund with International Union Industry. | | 57.92 |

| | | | | | |
|---|---|---|---|---|---|
| other pension or profit sharing plans. Itemize. | | | | | |
| 12. Stock and interests in incorporated and unincorporated businesses. Itemize. | X | | | | |
| 13. Interests in partnerships or joint ventures. Itemize. | X | | | | |
| 14. Government and corporate bonds and other negotiable and non-negotiable instruments. | X | | | | |
| 15. Accounts receiv- | X | | | | |

| | | | | |
|---|---|---|---|---|
| able. | | | | |
| 16. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars. | X | | | |
| 17. Other liquidated debts owing debtor including tax refunds. Give particulars. | X | | | |

SCHEDULE B - PERSONAL PROPERTY

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

| TYPE OF PROPERTY | NONE | DESCRIPTION AND LOCATION OF PROPERTY | HWJC | CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION |
|---|---|---|---|---|
| 18. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| than those listed in Schedule of Real Property. | | | | | |
| 19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. | X | | | | |
| 20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated | X | | | | |

| | | | | |
|---|---|---|---|---|
| value of each. | | | | |
| 21. Patents, copyrights, and other intellectual property. Give particulars. | X | | | |
| 22. Licenses, franchises, and other general intangibles. Give particulars. | X | | | |
| 23. Automobiles, trucks, trailers, and other vehicles and accessories. | | **02 Honda CRV, V.I.N. JHLRD78802C058760, title holder, American Honda Finance Corp., 470 Granby Rd., Ste. 2, S. Hadley, MA 01075.** | | **13,367.00** |
| 24. Boats, motors, and accessories. | X | | | |
| 25. Aircraft and accessories. | X | | | |

| | | | | |
|---|---|---|---|---|
| 26. Office equipment, furnishings, and supplies. | X | | | |
| 27. Machinery, fixtures, equipment, and supplies used in business. | | See attached list of business equipment. | | 10,718.00 |
| 28. Inventory. | | Food goods on hand at restaurant of the debtor | | 3,000.00 |
| 29. Animals. | X | | | |
| 30. Crops - growing or harvested. Give particulars. | X | | | |
| 31. Farming equipment and implements. | X | | | |
| 32. Farm supplies, chemicals, and feed. | X | | | |

| | | | | |
|---|---|---|---|---|
| 33. Other personal property of any kind not already listed. Itemize. | X | | | |
| | | | **TOTAL** | **29,268.92** |

0 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

SCHEDULE B - PERSONAL PROPERTY

**Schedule B, attachment in answer to question 27 of the preceeding. Reilly.**

[handwritten]

**TWO WORLDS BY FINE EUROPEAN CATERING**
**AT**
**RT 93 SUITE #3**
**BROOKHILL CENTER**
**P.O. BOX 382**
**CONYNGHAM PA 18219**
**(570)-788-1088**



**EQUIPMENT:** Tax is not included.

| | | | Paid | Today's Market Value |
|---|---|---|---|---|
| 1 | Coffee maker<br>Airpot Brewer | 1 New | $545.00 | $250.00 |
| 2 | Soup Warmers<br>Anvil (Black & Stainless steel) | 2 New | $270.00 | $100.00 |
| 3 | 3 Bay sink | 1 Used | $350.00 | $100.00 |

| | | | | |
|---|---|---|---|---|
| 4 | Handwashing sink | 1 Used | Free | Free |
| 5 | Microwave oven<br>Quasar | 1 Used | $120.00 | $25.00 |
| 6 | Sandwich Grill<br>Star Pane Belle Grooved New | 1 New | $1,897.40 | $950.00 |
| 7 | Hot Plate | 1 New | $378.00 | $150.00 |
| 8 | Convection Oven<br>single deck - US Range | 1 New | $2,225.00<br>$200.00 | $1,000.00<br>$100.00 |

[handwritten]

TWO WORLDS' EQUIPMENT

| | | | Paid. | Today's Market value |
|---|---|---|---|---|
| 10 | Refrigerator 32" Turbo Air 2 sliding door | 1 New | $1,775.00 | $600.00 |
| 11 | 56" Refrigerator Turbo Air 2 sliding door | 1 New | $1,975.00 | $800.00 |
| 12 | Coffee table | New | $55.00 | $30.00 |
| 12a | Grill table | New | $150.00 | $50.00 |
| 13 | Refrigerated Pastry Case Federel used | 1 Used | $950.00 | $400.00 or less |
| 14 | Round Table | 3 Used | $100.00 | $50.00 |
| 15 | Chairs BISTRO CHAIR BK FRAME | 9 New | $458.00 | $150.00 |
| 16 | Barstools BURG BLK FRAME | 6 New | $476.92 | $160.00 |

| | | | | |
|---|---|---|---|---|
| 17 | Holding Shelves | 3 New | $160.00 | $80.00 |
| 19 | High Chair<br>Wooden Mahogany | 1 New | 38.16<br>~~$36.00~~ nr | $18.00 |
| 20 | Cash Register | 1 New | $148.00 | $70.00 |
| 21 | Slicer | 1 Used | $150.00 | $75.00 |
| 22 | Holding Rack & trays | | $185.00 | $100.00 |
| 23 | Dishes, Flatware & others | | $300.00 | $100.00 |

[handwritten]

**FINE EUROPEAN CATERING AT**
**[address and phone number redacted]**

EQUIPMENT

| | | | Paid | Today's Market Value |
|---|---|---|---|---|
| 1 | 3 Bay Sink | 1 New | $700.00 | $300.00 |
| 2 | Hand Washing Sink | 1 New | $36.00 | $10.00 |
| 3 | Dough Roller (Sheeter) | 1 New | $2,665.00 | $800.00 |
| 4 | Gas stove | 1 New | $1,000.00 | $500.00 |
| | U.S. Range | 1 New | | |
| 5 | Hood | 1 New | $2,000.00 | $1,000.00 |
| 6 | Ref - Freezer | 1 New | $2,200.00 | $500.00 |
| 7 | Dough Mixer | 1 New | $2300.00 | $1,500.00 |
| 8 | Fire Suppresive System | | $1,500.00 | $750.00 |

**IN RE** Reilly, Nadejda _____ Case No. _____
Debtor(s)

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

☑ 11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). NOTE: These exemptions are available only in certain states.

☐ 11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

| DESCRIPTION OF PROPERTY | SPECIFY LAW PROVIDING EACH EXEMPTION | VALUE OF CLAIMED EXEMPTION | CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMP-TIONS |
|---|---|---|---|
| SCHEDULE B - PERSONAL PROPERTY | | | |
| Account no. [redacted], business account at PNC Bank, Hazleton, PA. Name on account, Fine European Catering. | 11 USC § 522(d)(5) | 21.00 | 21.00 |
| Personal checking account of debtor with PNC Bank, Hazleton, PA acct. no. [redacted] | 11 USC § 522(d)(5) | 5.00 | 5.00 |
| Pictures, camera, other personal property for child. | 11 USC § 522(d)(3) | 1,000.00 | 1,000.00 |

| | | | |
|---|---|---|---|
| Clothing. | 11 USC § 522(d)(3) | 1,000.00 | 1,000.00 |
| Jewelry | 11 USC § 522(d)(4) | 100.00 | 100.00 |
| Pension fund with International Union Industry. | 11 USC § 522(d)(10)(E) | 57.92 | 57.92 |
| 02 Honda CRV, V.I.N. JHLRD78802C058760, title holder, American Honda Finance Corp., 470 Granby Rd., Ste. 2, S. Hadley, MA 01075. | 11 USC § 522(d)(2) | 2,950.00 | 13,367.00 |
| See attached list of business equipment. | 11 USC § 522(d)(6)<br>11 USC § 522(d)(5) | 1,850.00<br>8,868.00 | 10,718.00 |
| Food goods on hand at restaurant of the debtor | 11 USC § 522(d)(5)<br>11 USC § 522(d)(5) | 1,331.00<br>975.00 | 3,000.00 |

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C," respectively, in the column labeled "HWJC."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. (See instructions above.) | CODEBTOR | HWJC | DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL ..... UNSECURED PORTION, IF ANY |
|---|---|---|---|---|---|---|---|
| Account No.<br>**American Honda Finance Corp.<br>470 Grandby Rd., Ste. 2<br>South Hadly, MA 01075** | | | **Purchase new. Vehicle is a 2002 Honda CRV 4WD EX VIN JHLRD78802C058760, located at residence of debtor. Date of loan 5/31/02.**<br>Value $ **13,367.00** | | | | **11,000.00** |

| Account No. | | Value $ | | | | ..... |
|---|---|---|---|---|---|---|
| Account No. | | Value $ | | | | ..... |
| Account No. | | Value $ | | | | ..... |
| Account No. | | Value $ | | | | ..... |

| | | |
|---|---|---|
| 0 Continuation Sheets attached | Subtotal (Total of this page) | 11,000.00 |
| | (Complete only on last sheet of Schedule D) TOTAL | 11,000.00 |

(Report total also on Summary of Schedules)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entiry on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C," respectively, in the column labeled "HWJC."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box

labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☑ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS**
(Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case**
Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2)

☐ **Wages, salaries, and commissions**
Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,925* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**
Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**
Claims of certain farmers and fishermen, up to a maximum of $4,925* per farmer or fisherman,

against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**
Claims of individuals up to a maximum of $2,225* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6)

☐ **Alimony, Maintenance, or Support**
Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Other Certain Debts Owed to Governmental Units**
Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**
Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 Continuation Sheets attached

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding unsecured claims without priority against the debtor or the property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C," respectively, in the column labeled "HWJC."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

❑ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | CODEBTOR | H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No.<br>**Attorney Marcus V. Hallum<br>678 Chase Parkway<br>Waterbury, CT 06708** | | | **Legal services provided to debtor. All services provided are pre petition debtl. Final statement not received by debtor. Final biill amount unknown as of this time.** | | | | **0.00** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Account No. [redacted]<br>Bank One<br>Chase Bank USA N.A.<br>P.O. Box 15153<br>Wilmington, DE 19886-5153 | | | Revolving consumer credit card account over past several years. | | | | 5,791.40 |
| Account No.<br>Encore Receivable Management Inc.<br>P.O. Box 3330<br>Olathe, KS 66063-3330 | | | Assignee or other notification for:<br>Bank One | | | | |
| Account No. [redacted]<br>Chase Manhattan Bank, USA NA<br>P.O. Box 52188<br>Phoenix, AZ 85072-2188 | | | Revolving consumer credit card use over past several years. Additional creditor name CACV of Colorado, LLC. | | | | 3,107.31 |
| Account No.<br>Law Offices Of Shannon D. Matthews, LLC<br>P.O. Box 211576<br>Columbia, SC 29221-1576 | | | Assignee or other notification for:<br>Chase Manhattan Bank, USA NA | | | | |

| | | |
|---|---|---|
| 4 Continuation Sheets attached | Subtotal (Total of this page) | 8,898.71 |
| | (Complete only on last sheet of Schedule F) **TOTAL** (Report total also on Summary of Schedules) | |

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
**(Continuation Sheet)**

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | HWJC | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. [redacted] | | | **Legal services provided** | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| D'Amico, Griffin & Pettinicchi, LLC<br>465 Straits Turnpike<br>P.O. Box 670<br>Watertown, CT 06795 | | | for daughter of debtor. Legal services provided todaughrter of debtor, but debtor is financially responsibe. All services provided are pre petition debt. Final statement not received by debtor. Final biill amount unknown as of this time. | | | | 0.00 |
| Account No. [redacted]<br>Discover Financial Services<br>P.O. Box 8003<br>Hilliard, OH 43026-8003 | | | Revolving consumer credit card acount over past several years. | | | | 5,579.60 |
| Account No.<br>Attorney Eric M. Berman, P.C.<br>500 W. Main St., Ste. 212 | | | Assignee or other notification for:<br>Discover Financial Services | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Babylon, NY 11702-3035 | | | | | | | |
| Account No. [redacted]<br>Filene's<br>P.O. Box 94868<br>Cleveland, OH 44101-4868 | | | | | | | 845.62 |
| Account No.<br>Filene's<br>111 Boulder Industrial Dr.<br>Bridgeton, MO 63044 | | | Assignee or other notification for:<br>Filene's | | | | |
| Account No. [redacted]<br>Household Bank<br>P.O. Box 17313<br>Baltimore, MD 21297-1313 | | | Revolving consumer credit card account over past several years. | | | | 12,058.61 |
| Account No.<br>Bankcard Services | | | Assignee or other notification for: | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P.O. Box 1323<br>Buffalo, NY 14240 | | | Household Bank | | | | |

Subtotal
(Total of this page) **18,483.83**

Sheet 1 of 4 Continuation Sheets attached to Schedule F

(Complete only on last sheet of Schedule F) **TOTAL**

(Report total also on Summary of Schedules)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**
**(Continuation Sheet)**

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | HWJC | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No.<br>**Credit Card Services<br>P.O. Box 17313** | | | **Assignee or other notification for:<br>Household Bank** | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Baltimore, MD 21297-1313 | | | | | | | |
| Account No.<br>Direct Merchants Credit Card Bank<br>Attention Agency Mngt.<br>For Bankruptcy<br>17000 N. Perimeter Dr.<br>Scottsdale, AZ 85255 | | | Assignee or other notification for:<br>Household Bank | | | | |
| Account No.<br>Recovery Partners II, LLC<br>C/O Thornton Financial Services<br>P.O. Box 9185<br>Minneapolis, MN 55480-9185 | | | Assignee or other notification for:<br>Household Bank | | | | |
| Account No. [redacted] | | | Revolving consumer | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Household Bank<br>P.O. Box 17051<br>Baltimore, MD 21297-1051 | | | credit card account over past several years. | | | | 3,115.73 |
| Account No.<br>Household<br>P.O. Box 80053<br>Salinas, CA 93912-0053 | | | Assignee or other notification for:<br>Household Bank | | | | |
| Account No. [redacted]<br>J.C. Penny<br>Monogram Credit Card<br>Bank Of GA<br>P.O. Box 981131<br>El Paso, TX 79998 | | | Revolving consumer credit card account over past several years. | | | | 2,021.72 |
| Account No.<br>Monogram Credit Card<br>Bank Of GA<br>P.O. Box 105985 | | | Assignee or other notification for:<br>J.C. Penny | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Atlanta, GA 30348-5985** | | | | | | | |

Subtotal
(Total of this page) **5,137.45**

Sheet **2** of **4** Continuation Sheets attached to Schedule F

(Complete only on last sheet of Schedule F) **TOTAL**
(Report total also on Summary of Schedules)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No.<br>**Monogram Credit Card Bank Of GA** | | | **Assignee or other notification for: J.C. Penny** | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P.O. Box 981133<br>El Paso, TX 79998-1133 | | | | | | | |
| Account No.<br>NCO Financial Systems Inc.<br>P.O. Box 30244 Dept 64<br>Middleburg Heights, OH 44130 | | | Assignee or other notification for: J.C. Penny | | | | |
| Account No.<br>NCO Financial Systems Inc.<br>6286 Pearl Rd.<br>Parma Heights, OH 44130 | | | Assignee or other notification for:<br>J.C. Penny | | | | |
| Account No. [redacted]<br>Juan Fica, M.D., LLC<br>1389 W. Main St. P.O. Box 310 | | | Medical services provided for debtor, 2002 and 2003. | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Bethlehem, CT 06751 | | | | | | | 60.60 |
| Account No.<br>Associated Plan Administrators, Inc.<br>P.O. Box 9568<br>New Haven, CT 06535-9568 | | | Assignee or other notification for:<br>Juan Fica, M.D., LLC | | | | |
| Account No. [redacted]<br>MBNA<br>Bankcard Services<br>P.O. Box 15026<br>Wilmington, DE 19850-5026 | | | Revolving consumer credit card account over past several years. | | | | 3,654.06 |

| Account No. | | | Assignee or other notification for: | | | | |
|---|---|---|---|---|---|---|---|
| **Creditors Interchange<br>P.O. Box 1335<br>Buffalo, NY 14240-1335** | | | **MBNA** | | | | |

Sheet 3 of 4 Continuation Sheets attached to Schedule F

Subtotal (Total of this page) **3,714.66**

(Complete only on last sheet of Schedule F) **TOTAL**
(Report total also on Summary of Schedules)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | HWJC | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. [redacted]<br>Monogram Credit Card Bank Of GA | | | Revolving consumer credit card account over past several | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P.O. Box 105985<br>Atlanta, GA 30348-5985 | | | years. | | | | 1,979.00 |
| Account No. [redacted]<br>Quest Diagnostics<br>P.O. Box 64053<br>Baltimore, MD 21264-4053 | | | Medical services provided for debtor April 10, 2003. | | | | 77.25 |
| Account No. [redacted]<br>Sears Gold Mastercard<br>P.O. Box 6922<br>The Lakes, NV 88901-6922 | | | Revolving consumer credit card account over past several years. | | | | 3,819.64 |
| Account No.<br>Citicards<br>P.O. Box 182532<br>Columbus, OH 43218 | | | Assignee or other notification for:<br>Sears Gold Mastercard | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Account No. [redacted]<br>**Victoria's Secret<br>P.O. Box 659728<br>San Antonio, TX<br>78265-9728** | | | **Revolving consumer credit card account over past several years.** | | | | **250.38** |
| Account No. | | | | | | | |
| Account No. | | | | | | | |

Subtotal (Total of this page) **6,126.27**

Sheet **4** of **4** Continuation Sheets attached to Schedule F

(Complete only on last sheet of Schedule F) **TOTAL** **42,360.92**

(Report total also on Summary of Schedules)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

IN RE Reilly, Nadejda Case No. _____
Debtor(s)

## SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests.

State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete addresses of all other parties to each lease or contract described.

**NOTE:** A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☑ Check this box if debtor has no executory contracts or unexpired leases.

| NAME AND MAILING ADDRESS, INCLUDING ZIP CODE OF OTHER PARTIES TO LEASE OR CONTRACT | DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NON-RESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT. |
|---|---|
| | |

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

☑ Check this box if debtor has no codebtors.

| NAME AND ADDRESS OF CODEBTOR | NAME AND ADDRESS OF CREDITOR |
|---|---|
| | |

SCHEDULE H - CODEBTORS

IN RE Reilly, Nadejda _____ Case No. _____
Debtor(s)

## SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

| Debtor's Marital Status | DEPENDENTS OF DEBTOR AND SPOUSE | |
|---|---|---|
| **Divorced** | RELATIONSHIP<br>**Daughter** | AGE<br>**2** |

| EMPLOYMENT: | DEBTOR | SPOUSE |
|---|---|---|
| Occupation | **Self-Employed** | |
| Name of Employer | **Two Worlds By Fine European Catering** | |
| How long employed | **5 Months** | |
| Address of Employer | **Rt. 93, Ste. 3 Brookhill Center<br>Conyngham, PA 18219** | |

| Income: (Estimate of average monthly income) | DEBTOR | SPOUSE |
|---|---|---|
| Current Monthly gross wages, salary, and commissions (pro rata if not paid monthly) | $ | $ |
| Estimated monthly overtime | $ | $ |
| **SUBTOTAL** | $ 0.00 | $ |
| LESS PAYROLL DEDUCTIONS | | |
| a. Payroll taxes and Social Security | $ | $ |
| b. Insurance | $ | $ |
| c. Union dues | $ | $ |
| d. Other (specify) _____ | $ | $ |
| _____ | $ | $ |
| **SUBTOTAL OF PAYROLL DEDUCTIONS** | $ 0.00 | $ |
| **TOTAL NET MONTHLY TAKE HOME PAY** | $ 0.00 | $ |
| Regular income from operation of business or profession or farm (attach detailed statement) | $ 2,800.00 | $ |
| Income from real property | $ | $ |
| Interest and dividends | $ | $ |

| | | |
|---|---|---|
| Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above | $ 596.00 | $ |
| Social Security or other government assistance (Specify) | $ | $ |
| | $ | $ |
| Pension or retirement income | $ | $ |
| Other monthly income (Specify) | $ | $ |
| | $ | $ |
| | $ | $ |
| **TOTAL MONTHLY INCOME** | $ 3,396.00 | $ |

**TOTAL COMBINED MONTHLY INCOME** $ 3,396.00 (Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

**IN RE Reilly, Nadejda** Case No. _____
Debtor(s)

## SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

| | | |
|---|---|---|
| Rent or home mortgage payment (include lot rented for mobile home) | $ | _____ |
| Are real estate taxes included? Yes __ No ✓ | | |
| Is property insurance included? Yes __ No ✓ | | |
| Utilities: Electricity and heating fuel | $ | _____ |
| Water and sewer | $ | _____ |
| Telephone | $ | _____ |
| Other _____ | $ | _____ |
| _____ | $ | _____ |
| _____ | $ | _____ |
| Home maintenance (repairs and upkeep) | $ | _____ |
| Food | $ | 200.00 |
| Clothing | $ | 100.00 |
| Laundry and dry cleaning | $ | 25.00 |
| Medical and dental expenses | $ | 50.00 |
| Transportation (not including car payments) | $ | 160.00 |
| Recreation, clubs and entertainment, newspapers, magazines, etc. | $ | _____ |

| | | |
|---|---|---|
| Charitable contributions | $ | 100.00 |
| Insurance (not deducted from wages or included in home mortgage payments) | | |
| Homeowner's or renter's | $ | |
| Life | $ | |
| Health | $ | |
| Auto | $ | 80.00 |
| Other Accident Insurance | $ | 12.00 |
| | $ | |
| | $ | |
| Taxes (not deducted from wages or included in home mortgage payments) (Specify) | $ | |
| | $ | |
| | $ | |
| Installment payments (in chapter 12 and 13 cases, do not list payments to be included in the plan) | | |
| Auto | $ | 418.00 |
| Other | $ | |
| | $ | |
| Alimony, maintenance, and support paid to others | $ | |
| Payments for support of additional dependents not living at your home | $ | |
| Regular expenses from operation of business, profession, or farm (attach detailed statement) | $ | 3,245.00 |
| Other | $ | |
| | $ | |
| | $ | |
| | $ | |
| | $ | |

| | |
|---|---|
| **TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)** | **$ 4,390.00** |

(FOR CHAPTER 12 AND 13 DEBTORS ONLY)
Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

| | |
|---|---|
| A. Total projected monthly income | $ _____ |
| B. Total projected monthly expenses | $ _____ |
| C. Excess income (A minus B) | $ _____ |
| D. Total amount to be paid into plan each _____ (interval) | $ _____ |

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

**IN RE** Reilly, Nadejda _____ Case No. _____
Debtor(s)

**DECLARATION CONCERNING DEBTOR'S SCHEDULES**

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of **16** sheets, and that
(Total shown on summary page plus 1)
they are true and correct to the best of my knowledge, information, and belief.

Date: **April 15, 2005** Signature: /s/ Nadejda Reilly
**Nadejda Reilly** Debtor

Date: _____ Signature: _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

---

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No. (Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

Signature of Bankruptcy Petition Preparer

Date

*A bankruptcy petition preparer's failure to comply with the provision of title 11 and the Federal Rules of Bankruptcy Procedures may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

---

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the _____ (the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership) of the _____ (corporation or partnership) named as debtor in this

case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they
(Total shown on summary page plus 1)

are true and correct to the best of my knowledge, information, and belief.

Date: _____ Signature:_____

_____
(Print or type name of individual signing on behalf of debtor)

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

**Penalty for making a false statement or concealing property. Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

**IN RE:** Case No. _____
Reilly, Nadejda Chapter 7
Debtor(s)

**BUSINESS INCOME AND EXPENSES**

**FINANCIAL REVIEW OF THE DEBTOR'S BUSINESS** (Note: ONLY INCLUDE information directly related to the business operation.)

**PART A** - GROSS BUSINESS INCOME FOR THE PREVIOUS 12 MONTHS:

1. Gross Income For 12 Months Prior to Filing: $2,800.00

**PART B** - ESTIMATED AVERAGE FUTURE GROSS MONTHLY INCOME:

2. Gross Monthly Income: $2,800.00

**PART C** - ESTIMATED FUTURE MONTHLY EXPENSES:

3. Net Employee Payroll (Other Than Debtor) $_____
4. Payroll Taxes $_____
5. Unemployment Taxes $_____
6. Worker's Compensation $_____
7. Other Taxes $ 145.00
8. Inventory Purchases (Including raw materials) $2,000.00
9. Purchase of Feed/Fertilizer/Seed/Spray $_____

| | | |
|---|---|---|
| 10. Rent (Other than debtor's principal residence) | $_____ | |
| 11. Utilities | $ 500.00 | |
| 12. Office Expenses and Supplies | $_____ | |
| 13. Repairs and Maintenance | $ 100.00 | |
| 14. Vehicle Expenses | $ 400.00 | |
| 15. Travel and Entertainment | $_____ | |
| 16. Equipment Rental and Leases | $_____ | |
| 17. Legal/Accounting/Other Professional Fees | $_____ | |
| 18. Insurance | $ 15.00 | |
| 19. Employee Benefits (e.g., pension, medical, etc.) | $ 85.00 | |
| 20. Payments to be Made Directly by Debtor to Secured Creditors for Pre-Petition Business Debts (Specify): | $_____ | |
| 21. Other (Specify): | $_____ | |
| 22. Total Monthly Expenses (Add items 3-21) | | $3,245.00 |

**PART D** - ESTIMATED AVERAGE NET MONTHLY INCOME

| | |
|---|---|
| 23. **AVERAGE NET MONTHLY INCOME** (Subtract Item 22 from Item 2) | $ -445.00 |

BUSINESS INCOME AND EXPENSES

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

**IN RE** Case No. _____
**Reilly, Nadejda** Chapter 7
Debtor(s)

## STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1-18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19-25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

### *DEFINITIONS*

"*In business.*" A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of

this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"*Insider.*" The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

**1. Income from employment or operation of business**

None

☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| AMOUNT | SOURCE (if more than one) |
|---|---|
| 0.00 | 1/1/05 to date self employed operating restaurant and catering business at Rt 93 Ste. 3, Brookhill Center, P.O. Box 382, Conyngham, PA 18219. Name of business: Two Worlds/Fine European Catering |
| -18,683.00 | 6/1/04 to 12/31/04 Self employed operating Two Worlds/Fine European Catering, above. |
| 16,029.00 | 2002-2003 Unemployment compensation benefits, state of Connecticut. |
| 0.00 | 2001-2002 DeLuca - Perdue Farms Inc., Middlebury, CT quality insurance worker. |
| 0.00 | 1999-2001 Aqua Turf Club, Plantsville, CT, banquet server. |

**2. Income other than from employment or operation of business**

None

☑ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

**3. Payments to creditors**

None

☑ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

None

☑ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were

insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

STATEMENT OF FINANCIAL AFFAIRS

**4. Suits and administrative proceedings, executions, garnishments and attachments**

None

☑ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

None

☑ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

**5. Repossessions, foreclosures and returns**

None

☑ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of

either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

---

**6. Assignments and receiverships**

None

☑ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and joint petition is not filed.)

---

None

☑ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

---

**7. Gifts**

None

☑ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and

charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

---

**8. Losses**

None

☑ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

---

**9. Payments related to debt counseling or bankruptcy**

None

☑ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

---

**10. Other transfers**

None

☑ List all other property, other than property transferred in the ordinary course of the business

or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

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**11. Closed financial accounts**

None

☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, association, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF INSTITUTION | TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE | AMOUNT AND DATE OF SALE OR CLOSING |
|---|---|---|
| **Fleet Bank Of America<br>101 W. Broad St.<br>Hazleton, PA 18202** | **personal/business checking account** | **Closed 12-2004. $30.00** |
| **Fleet Bank Of America<br>Waterbury, CT** | **Savings account no. [redacted]<br>Checking account no. [redacted]** | **$1.00, 2004 joint accounts with ex husband. Believed to be closed.** |

STATEMENT OF FINANCIAL AFFAIRS

**12. Safe deposit boxes**

None

☑ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

**13. Setoffs**

None

☑ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

**14. Property held for another person**

None

☑ List all property owned by another person that the debtor holds or controls.

**15. Prior address of debtor**

None

☑ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

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**16. Spouses and Former Spouses**

None

☑ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

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**17. Environmental Information**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

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None

☑ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law.

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None

☑ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

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None

☑ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

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**18. Nature, location and name of business**

None

☐ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

| NAME | TAX-PAYER I.D. NUM-BER | AD-DRESS | NA-TURE OF BUSI-NESS | BEGIN-NING AND ENDING DATES |
|---|---|---|---|---|
| **Two Worlds/ Fine Euro-pean Catering** | | **Rt 93, Ste. 3 Connyng-ham, PA 18219** | **Res-taurant and ca-tering.** | **6/1/04 to present. Solo** |

STATEMENT OF FINANCIAL AFFAIRS

**18. Nature, location and name of business**

None

☐ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

| NAME | TAX-PAYER I.D. NUMBER | ADDRESS | NATURE OF BUSINESS | BEGINNING AND ENDING DATES |
|---|---|---|---|---|
| **Two Worlds/ Fine European Catering** | | **Rt 93, Ste. 3 Connyngham, PA 18219** | **Restaurant and catering.** | **6/1/04 to present. Solo proprietorship.** |

None

☑ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement* ***only*** *if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

**19. Books, records and financial statements**

None

☐ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

| NAME AND ADDRESS | DATES SERVICES RENDERED |
|---|---|
| **Kubishin And Ator<br>CPA's<br>75 Airport Rd.<br>Hazleton, PA 18201** | **2004 tax return** |
| **Self** | |

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None

☐ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

| NAME AND ADDRESS | DATES SERVICES RENDERED |
|---|---|
| **None** | |

---

None

☐ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME AND ADDRESS
**Debtor And Tax Preparor, Kubishin & Ator**

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None

☑ d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of the case by the debtor.

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**20. Inventories**

None

☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

| DATE OF INVENTORY | INVENTORY SUPERVISOR | DOLLAR AMOUNT OF INVENTORY (Specify cost, market, or other basis) |
|---|---|---|
| **3/15/05** | **Debtor** | **3500.00** |

| | | |
|---|---|---|
| **12/31/04** | **Debtor** | **3000.00** |

None

☐ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

| DATE OF INVENTORY | NAME AND ADDRESS OF CUSTODIAN OF INVENTORY RECORDS |
|---|---|
| | **Debtor** |

**21. Current Partners, Officers, Directors and Shareholders**

None

☑ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

None

☑ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

**22. Former partners, officers, directors and shareholders**

None

☑ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

None

☑ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

**23. Withdrawals from a partnership or distributions by a corporation**

None

☑ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

**24. Tax Consolidation Group**

None

☑ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of this case.

**25. Pension Funds.**

None

☑ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer,

has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

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[*If completed by an individual or individual and spouse*]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

| | | |
|---|---|---|
| Date: **April 15, 2005** | Signature of Debtor | /s/ Nadejda Reilly<br>**Najeda Reilly** |
| Date: _____ | Signature of Joint Debtor (if any) | _____ |

**0** continuation pages attached

*Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. § 152 and 3571.*

STATEMENT OF FINANCIAL AFFAIRS

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

**IN RE** Case No. _____
**Reilly, Nadejda** Chapter **7**
Debtor(s)

**CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION**

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

*a. Property to be Surrendered*

| DESCRIPTION OF PROPERTY | CREDITOR'S NAME |
|---|---|
| **None** | |

*b. Property to be Retained [Check any applicable statement.]*

| DESCRIPTION OF PROPERTY | CREDITOR'S NAME | PROPERTY IS CLAIMED AS EXEMPT | PROPERTY WILL BE REDEEMED PURSUANT TO 11 U.S.C. § 722 | DEBT WILL BE REAFFIRMED PURSUANT TO 11 U.S.C. § 524(C) |
|---|---|---|---|---|
| **02 Honda CRV, V.I.N. JHLRD 78802C0 58760, title** | **American Honda Finance Corp.** | | | ✓ |

| 04/15/2005 | /s/ Nadejda Reilly | |
|---|---|---|
| Date | **Nadejda Reilly** Debtor | Joint Debtor (if applicable) |

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER
(See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

| | |
|---|---|
| Printed or Typed Name of Bankruptcy Petition Preparer | Social Security No. (Required by 11 U.S.C. § 110(c).) |
| Address | |

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

| | |
|---|---|
| Signature of Bankruptcy Petition Preparer | Date |

*A bankruptcy petition preparer's failure to comply with the provision of title 11 and the Federal Rules of Bankruptcy Procedures may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

**IN RE** Case No. _____
**Reilly, Nadejda** Chapter **7**
Debtor(s)

**DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR**

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

   For legal services, I have agreed to accept ..... **$ 750.00**

   Prior to the filing of this statement I have received ..... **$ 750.00**

   Balance Due ..... **$ 0.00**

2. The source of the compensation paid to me was:
   ☑ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:
   ☐ Debtor ☐ Other (specify):

4. ☑ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

   ☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm.

A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. ~~Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;~~
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. ~~Representation of the debtor in adversary proceedings and other contested bankruptcy matters;~~
   e. [Other provisions as needed]

6. By agreement with the debtor(s), the above disclosed fee does not include the following services:

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

| | |
|---|---|
| **15th**<br>**April [redacted], 2005**<br>Date | **/s/ Gino L. Andreuzzi**<br>Signature of Attorney<br><br>**Attorney Gino L. Andreuzzi**<br>Name of Law Firm |

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

## UNITED STATES BANKRUPTCY COURT

## NOTICE TO INDIVIDUAL CONSUMER DEBTOR

The purpose of this notice is to acquaint you with the four chapters of the federal Bankruptcy Code under which you may file a bankruptcy petition. The bankruptcy law is complicated and not easily described. Therefore, you should seek the advice of an attorney to learn of your rights and responsibilities under the law should you decide to file a petition with the court. Neither the judge nor the court's employees may provide you with legal advice.

**Chapter 7: Liquidation ($155 filing fee plus $39 administrative fee plus $15 trustee surcharge)***

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts.

2. Under Chapter 7 a trustee takes possession of all your property. You may claim certain of your property as exempt under governing law. The trustee then liquidates the property and uses the proceeds to pay your creditors according to priorities of the Bankruptcy Code.

3. The purpose of filing a Chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, your discharge may be denied by the court, and the purpose for which you filed the bankruptcy petition will be defeated.

4. Even if you receive a discharge, there are some debts that are not discharged under the law. Therefore, you may still be responsible for such debts as certain taxes and student loans, alimony and support pay-

ments, criminal restitution, and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs.

5. Under certain circumstances you may keep property that you have purchased subject to a valid security interest. Your attorney can explain the options that are available to you.

**Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income ($155 filing fee plus $39 administrative fee)***

1. Chapter 13 is designed for individuals with regular income who are temporarily unable to pay their debts but would like to pay them in installments over a period of time. You are only eligible for Chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

2. Under Chapter 13 you must file a plan with the court to repay your creditors all or part of the money that you owe them, using your future earnings. Usually the period allowed by the court to repay your debts is three years, but not more than five years. Your plan must be approved by the court before it can take effect.

3. Under Chapter 13, unlike Chapter 7, you may keep all your property, both exempt and non-exempt, as long as you continue to make payments under the plan.

4. After completion of payments under your plan, your debts are discharged except alimony and support payments, student loans, certain debts including criminal fines and restitution and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs, and long term secured obligations.

**Chapter 11: Reorganization ($800 filing fee plus $39 administrative fee)***

Chapter 11 is designed primarily for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision for an individual to file a Chapter 11 petition should be reviewed with an attorney.

**Chapter 12: Family Farmer ($200 filing fee plus $39 administrative fee)***

Chapter 12 is designed to permit family farmers to repay their debts over a period of time from future earnings and is in many ways similar to a Chapter 13. The eligibility requirements are restrictive, limiting its use to those who income arises primarily from a family owned farm.

* Fees are subject to change and should be confirmed before filing.

**ACKNOWLEDGEMENT**

I, the debtor, affirm that I have read this notice.

Case Number

| April 15, 2005 | /s/ Nadejda Reilly | |
|---|---|---|
| Date | **Nadejda Reilly**<br>Debtor | Joint Debtor, if any |

**INSTRUCTIONS:** If the debtor is an individual, a copy of this notice personally signed by the debtor must accompany any bankruptcy petition filed with the Clerk. If filed by joint debtors, the notice must be personally signed by each. Failure to comply may result in the petition not being accepted for filing.

NOTICE TO INDIVIDUAL CONSUMER DEBTOR

**United States Bankruptcy Court**
**Middle District of Pennsylvania**

**IN RE** Case No. _____
**Reilly, Nadejda** Chapter **7**
Debtor(s)

**VERIFICATION OF CREDITOR MATRIX**

The above named debtor(s) hereby verify(ies) that the attached matrix listing creditors is true to the best of my(our) knowledge.

Date: **April 15, 2005** Signature: /s/ Nadejda Reilly
**Nadejda Reilly**Debtor

Date: _____ Signature: _____
Joint Debtor, if any

VERIFICATION OF CREDITOR MATRIX

Reilly, Nadejda
[address redacted]

Attorney Gino L. Andreuzzi
85 Drasher Rd., Ste II
Drums, PA 18222

American Honda Finance Corp.
470 Grandby Rd., Ste. 2
South Hadly, MA 01075

Associated Plan Administrators, Inc.
P.O. Box 9568
New Haven, CT 06535-9568

Attorney Eric M. Berman, P.C.
500 W. Main St., Ste. 212
Babylon, NY 11702-3035

Attorney Marcus V. Hallum
678 Chase Parkway
Waterbury, CT 06708

Bank One
Chase Bank USA N.A.
P.O. Box 15153
Wilmington, DE 19886-5153

Bankcard Services
P.O. Box 1323
Buffalo, NY 14240

Chase Manhattan Bank, USA NA
P.O. Box 52188
Phoenix, AZ 85072-2188

Citicards
P.O. Box 182532
Columbus, OH 43218

Credit Card Services
P.O. Box 17313
Baltimore, MD 21297-1313

Creditors Interchange
P.O. Box 1335
Buffalo, NY 14240-1335

D'Amico, Griffin & Pettinicchi, LLC
465 Straits Turnpike, P.O. Box 670
Watertown, CT 06795

Direct Merchants Credit Card Bank
Attention Agency Mngt. for Bankruptcy
17000 N. Perimeter Dr.
Scottsdale, AZ 85255

Discover Financial Services
P.O. Box 8003
Hilliard, OH 43026-8003

Encore Receivable Management Inc.
P.O. Box 3330
Olathe, KS 66063-3330

Filene's
P.O. Box 94868
Cleveland, OH 44101-4868

Filene's
111 Boulder Industrial Dr.
Bridgeton, MO 63044

Household
P.O. Box 80053
Salinas, CA 93912-0053

Household Bank
P.O. Box 17313
Baltimore, MD 21297-1313

Household Bank
P.O. Box 17051
Baltimore, MD 21297-1051

J.C. Penny
Monogram Credit Card Bank of GA
P.O. Box 981131
El Paso, TX 79998

Juan Fica, M.D., LLC
1389 W. Main St., P.O. Box 310
Bethlehem, CT 06751

Law Firm of Harrison & Taylor, LLC
P.O. Box 211576
Columbia, SC 29221-1576

Law Offices of Shannon D. Matthews, LLC
P.O. Box 211576
Columbia, SC 29221-1576

MBNA
Bankcard Services
P.O. Box 15026
Wilmington, DE 19850-5026

Monogram Credit Card Bank of GA
P.O. Box 105985
Atlanta, GA 30348-5985

Monogram Credit Card Bank of GA
P.O. Box 981133
El Paso, TX 79998-1133

NCO Financial Systems Inc.
P.O. Box 30244 Dept. 64
Middleburg Heights, OH 44130

NCO Financial Systems Inc.
6286 Pearl Rd.
Parma Heights, OH 44130

Quest Diagnostics
P.O. Box 64053
Baltimore, MD 21264-4053

Recovery Partners II, LLC
C/O Thornton Financial Services
P.O. Box 9185
Minneapolis, MN 55480-9185

Sears Gold Mastercard
P.O. Box 6922
The Lakes, NV 88901-6922

Thornton Financial Services
C/O U.S. Bank
P.O. Box 9185
Minneapolis, MN 55480-9185

Victoria's Secret
P.O. Box 659728
San Antonio, TX 78265-9728

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT NORTHERN OF
PENNSYLVANIA

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DEBTOR'S NAME: Nadejda
Reilly.

CASE NUMBER:
5-05-52187
CHAPTER 7

---

**MOTION FOR DISMISAL**

And now comes the above debtor, Nadejda Reilly, and prays this honorable court to dismiss her petition in bankruptcy based upon the following:

1. The debtor has filed her petition with schedules, statements, notices, disclosures and verifications attached thereto. A first meeting of creditors had been held on her case on June 22, 2005.

2. Thereat it was determined that the debtor is not entitled to a full exemption in her tools of the trade/personal property in reference to her business equipment.

3. The Trustee advised the debtor that he will sell the entire business equipment and inventory for the purpose of paying creditors the excess amount realized from the sale after the debtors monetary exemption is paid.

4. The business equipment and inventory of the debtor is necessary to her livelihood and art, and was a gift to her from her parents. The debtor does not desire to continue with the bankruptcy since she wishes to continue in restaurant and catering as her occupation.

5. The debtor has plans to pay off her creditors through third party public or private lending in an effort to avoid bankruptcy and loss of her property.

Wherefore, the debtor no longer wishes to continue with her petition in bankruptcy, and requests this honorable court to dismiss her petition without prejudice at this time.

Date: June 29, 2005

/s/ Gino L. Andreuzzi

Gino L. Andreuzzi, Esquire
85 Drasher Rd., Ste II
Drums, PA 18222
Telephone: (570) 788-5373
Fax: (570) 788-3535

[STAMP: FILED
WILKES-BARRE
2005-JUL 1 [ILLEGIBLE]
CLERK U.S. BANKRUPTCY COURT]

**UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| IN RE: | : | |
| REILLY, NADEJDA | : | Chapter 7 |
| d/b/a Two Worlds Restaurant, d/b/a Fine | : | Case No. 5-05-52187 |
| European Catering, | : | |
| Debtor, | : | |
| | : | |

**APPLICATION FOR APPOINTMENT OF AUCTIONEER**

WILLIAM G. SCHWAB, TRUSTEE, hereby applies for an Order as follows:

1. Applicant is Trustee herein, having been duly appointed.

2. Debtor is the owner of certain restaurant equipment, appliances and miscellaneous furniture, and other personal property.

3. Your Applicant desires to conduct an auction sale on the premises for the purpose of liquidating the personal property.

4. Your Applicant desires to retain HOUSER AUCTIONEERS, a licensed and bonded auctioneer, to conduct the auction sale for a commission of ten (10%) percent of the gross proceeds, plus reimbursement for the pro-rata reasonable expenses in connection with the sale.

5. HOUSER AUCTIONEERS is highly experienced and has performed similar services for Applicant and other Trustees on numerous occasions. A signed

Declaration of the Auctioneer is attached and marked as Exhibit "A". The Bond of Insurance is attached and marked was Exhibit "B".

WHEREFORE, your Applicant requests an appropriate Order.

WILLIAM G. SCHWAB & ASSOCIATES:
/s/: William G. Schwab
**WILLIAM G. SCHWAB, ESQUIRE**
Attorney for Trustee
811 Blakeslee Blvd. Drive East
PO Box 56, Lehighton, PA 18235
(610) 377-5200, (610) 377-5209 (FAX)

**UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| IN RE: | : | |
| REILLY, NADEJDA | : | Chapter 7 |
| d/b/a Two Worlds | : | Case No. 5-05-52187 |
| Restaurant, | : | |
| d/b/a Fine European | : | |
| Catering, | : | |
| Debtor, | : | |

**MOTION TO SELL PERSONAL PROPERTY AT PUBLIC SALE**

TO THE HONORABLE JOHN J. THOMAS, BANKRUPTCY JUDGE:

The Motion of WILLIAM G. SCHWAB, ESQUIRE, Trustee, in Bankruptcy herein respectfully represents:

1. Movant is the duly appointed, qualified and acting Trustee in Bankruptcy in the above-captioned proceeding, having his place of business at 811 Blakeslee Boulevard Drive East, Lehighton, Pennsylvania 18235.

2. Trustee has come into ownership and possession of, as of the date of the filing herein, certain restaurant equipment, appliances and miscellaneous furniture.

3. The Trustee has examined the items of personal property with the Debtor as well as a proposed auctioneer, HOUSER AUCTIONEERS, and has determined that it is in the best interest of the estate and creditors to offer the same for public sale.

4. The Trustee proposes to hold a public sale on MONDAY, SEPTEMBER 12, 2005 beginning at 10:00 a.m., or if continued to a later date at Route 93, Suite 3, Brook Hill Center, Conyngham, Pennsylvania.

5. The Trustee has filed an application to employ HOUSER AUCTIONEERS, as auctioneer at a commission of Ten (10%) percent of the gross proceeds, plus pro-rata costs of advertising and labor.

6. The Trustee has received the results of his record search from Luzerne County and the Uniform Commercial Code Corporation Bureau filing office, and has been advised and has reviewed certain documents so that the Trustee recognizes that there is no security interest in the said personal property.

7. The Trustee requests permission to distribute the proceeds realized from the sale of their personal property, pursuant to the priority of the United States Bankruptcy Court as follows:

a. Any out-of-pocket expenses advanced by WILLIAM G. SCHWAB, ESQUIRE, in connection with the sale of the aforementioned property, along with a reserve of Three (3%) percent for a potential Trustee commission to be held until further Order of Court;

(b) Ten percent (10%) of the gross sale proceeds plus pro-rata costs of advertising and labor to HOUSER AUCTIONEERS, Auctioneer;

(c) Any notarization or incidental recording fees associated with the sale of the personal property;

(d) Balance to be deposited into the estate checking account, pending further Order of this Court.

8. The Trustee requests the Court to issue a date by which responses, if any, objecting to the public sale of personal property at the aforesaid location may be filed.

WHEREFORE, the Trustee prays your Honorable Court to issue a Notice to Creditors indicating on such the final date for filing answers or objections to the within motion, and following the time set for answers or objections, to enter an order granting relief to sell the aforementioned personal property at public sale, and to allow the Trustee, WILLIAM G. SCHWAB, ESQUIRE, to execute all papers and documents including, but not limited to, titles for vehicles and equipment, necessary to effectuate said sale, and to distribute the proceeds as aforementioned.

WILLIAM G. SCHWAB & ASSOCIATES:

/s/: William G. Schwab
**WILLIAM G. SCHWAB, ESQUIRE**
Attorney for Trustee in Bankruptcy
Attorney I.D. #23081
811 Blakeslee Blvd. Drive East
P.O. Box 56, Lehighton, PA 18235
(610) 377-5200, (610) 377-5209 (FAX)
schwab@uslawcenter.com

**UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| IN RE: | : | |
| REILLY, NADEJDA | : | Chapter 7 |
| d/b/a Two Worlds | : | Case No. 5-05-52187 |
| Restaurant, | : | |
| d/b/a Fine European | : | |
| Catering, | : | |
| Debtor, | : | |

ORDER APPROVING APPOINTMENT OF AUCTIONEER

Upon consideration of the Trustee's Application:

IT IS ORDERED that HOUSER AUCTIONEERS is hereby appointed auctioneer in this matter for the purpose of liquidating the personal property of the Debtor for a sales commission of ten (10%) percent of the gross proceeds of sale, plus reimbursement for pro-rata reasonable expenses of the sale.

*Execution of this Order approving employment is not a guarantee that payment will ultimately be approved in the full amount. Such compensation is dependent on the consideration of a final application for fees. *In re Engel*, 124 F.3D 567 (3rd Cir. 1997).

Date: August 19, 2005

/s/ John J. Thomas
John J. Thomas, Bankruptcy Judge

(RPR)

***This electronic order is signed and filed on the same date.***

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT NORTHERN OF PENNSYLVANIA**

**DEBTOR'S NAME: NADEJDA REILLY**
**dba Two Worlds Restaurant**
**dba Fine European Catering**

[STAMP: FILED
2005 SEP-2 PM 2:48]

[STAMP: ORIGINAL]

**CASE NUMBER: 5-05-52187**
**CHAPTER 7**

**ANSWER TO MOTION TO SELL PESONAL PROPERTY AT PUBLIC SALE**

The debtor in the above captioned matter, Nadejda Reilly, dba Two Worlds Restaurant, dba Fine European Catering, answers the motion of the Trustee to sell the personal property of the debtor at Public Sale as follows:

1-2. Admitted in part and denied in part. The debtor has claimed valid personal exemptions in the property recited by the trustee herein.

3. Inasmuch as the materials plead are within the exclusive control of the adverse party, Defendant cannot admit or deny the subject allegation.

4. Admitted in part and denied in part. At the expiration of the debtor's lease at the place of her business the subject items had to be moved and are no longer at the place indicated in this paragraph. The items are now located at the debtor's residence.

5. Admitted

6. Denied, inasmuch as the allegation contains information now within the exclusive control of the trustee. Furthermore, the debtor's parents borrowed money to purchase these items for their daughter, the debtor herein.

7. Denied. The trustee is not entitled to the relief requested and a distribution of the proceeds of any such sale as proposed in the motion inasmuch as the debtor alleges those defenses set forth under separate heading herein.

8. The allegation requires no legal response.

**Affirmative Defenses.**

A. Failure to Object to Exempt Property.

9. The debtor has exempted the property sought to be sold by the trustee in Schedule C of her petition. All of the exemptions claimed by the debtor are valid and within the scope of section 522 of the bankruptcy code.

10. The First Meeting of Creditors was held on June 22, 2005.

11. Thirty days after the first meeting of creditors has elapsed and the trustee has failed to file objections to the debtors claimed exemptions thereby baring sale of the property in the manner sought by the trustee.

B. Failure to Establish Grounds for Sale of Debtor's Exemptions.

12. The Trustee has alleged no legal basis for the sale of the exempted property, or the proceeding the Trustee has followed in hiring counsel for himself or an auctioneer prior to court order permitting the sale. The trustee's activity is arbitrary and capricious and should be sanctioned by the court.

13. The trustee has not challenged the claimed exemptions of the debtor in a proper and timely manner, and has no legal status to proceed against the property of the debtor he seeks to sell. The trustee has set forth no reason in law or fact to proceed with a sale of the exempted property.

14. The trustee has no valid legal basis and has not established any factual basis for his actions in appointing an attorney for himself and in hiring an auctioneer for the sale. The trustee has acted prematurely and not in the best interest of the estate, the creditors or the debtor.

15. Inasmuch as the debtor has not been notified that her exemptions are challenged and the cause for such exemptions the debtor cannot prepare for hearing or argument since the issue has not been property framed in the pleading.

C. The Debtor Has Valid Exemptions in the Property Sought to be Sold.

16. The debtor has validly and timely set forth the property sought to be sold as her exempted property under the various subsections of section 522 of the code, as is more particularly set forth in Schedule C of her petition, said matter herein incorporated as though fully set forth.

17. To the best of the debtor's knowledge, information and belief the items, amounts, code references and all other information on the schedule is true and correct. No decision from the court has been made otherwise, and the action of the trustee remains unauthorized as he proceeds against validly exempted property.

18. Since the debtor has not been presented with any factual or legal reasons for the setting aside of her

exemptions, the debtor generally denies the allegations of the trustee to permit his unilateral right to proceed to sale in the instant matter.

D. Outstanding Unresolved Motion on the Issues. The Motion of the Trustee Has Been Prematurely Filed.

19. Inasmuch as the Debtor had previously filed with the court a motion to dismiss her case on July 1, 2005, which the trustee has previously filed an objection on July 5, 2005, the activity of the trustee and the motion for sale, filed August 10, 2005, is premature and may be rendered moot by a delayed decision of the motion of the debtor to dismiss her case.

20. The court scheduled a hearing on the motion to dismiss for October 20, 2005, and a decision thereon in favor of the debtor would render the trustee's premature action unnecessary and moot.

21. A decision on the previously filed motion should be made before proceeding with the sale which may thereafter be nullified by the court.

Wherefore, the debtor requests this motion be dismissed at this time, that an order of the court be issued stopping the trustee from conducting the sale of the debtor's personal property and that she be awarded legal fees, any costs incurred as a result of defending the motion and penalties be imposed upon the trustee in this matter.

Respectfully submitted,

/s/ Gino L. Andreuzzi

Gino L. Andreuzzi, Esq.
Attorney for the Debtor, Nadejda Reilly
85 Drasher Rd., Ste II
Drums, PA 18222
570-788-5373

**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| IN RE: | ) | Case No. 5-05-52187 |
| | ) | |
| NADEJDA REILLY | ) | Bankruptcy Courtroom |
| D/B/A TWO WORLDS | ) | No. 2 |
| RESTAURANT | ) | 274 Max Rosenn U.S. |
| D/B/A FINE EURO- | ) | Courthouse |
| PEAN CATERING, | ) | 197 South Main Street |
| | ) | Wilkes-Barre, PA 18701 |
| Debtor. | ) | |
| | ) | October 20, 2005 |
| | | 12:10 P.M. |

TRANSCRIPT OF HEARING
BEFORE HONORABLE JOHN J. THOMAS
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

| | |
|---|---|
| For the debtor: | GINO L. ANDREUZZI, ESQ.<br>85 Drasher Road, Suite II<br>Drums, Pennsylvania 18222 |
| For William G. Schwab, Trustee: | William G. Schwab and Associates<br>By: JASON ZAC CHRISTMAN, ESQ.<br>Post Office Box 56<br>Leighton, Pennsylvania 18235 |
| Audio Operator: | PAMELA A. RADGINSKI |

Proceedings recorded by electronic sound recording, transcript Produced by transcription service.

[2] THE COURT: The Reilly matter, right?

MR. CHRISTMAN: Yes, Your Honor. We have not been able to resolve the matter.

However, we believe we've come to the mutual conclusion that it's primarily the issues of law so that we be able to present cases. There's two separate matters. There's the debtor's motion to dismiss and the Trustee's motion to sell personal property.

THE COURT: I've reviewed these motions prior to taking the bench. So, I'm generally aware of what you're talking about.

MR. ANDREUZZI: Your Honor, a brief --

MR. CHRISTMAN: Yes, I have a copy, Your Honor.

THE COURT: Well, first of all, let's deal with the dismissal issue. I think -- and I say that because if I dismiss the case, then all this other stuff becomes -- the motion to sell doesn't mean anything, right?

MR. CHRISTMAN: Yes. Yes.

THE COURT: You want me to dismiss this case.

MR. ANDREUZZI: Yes.

THE COURT: But nothing in your motion really addressed the benefit of unsecured creditors. You basically just said I'm going to take -- I'll take care of it. The debtor will take care of the creditors.

You don't really say anything more than that. In [3] fact, I would actually consider -- you know, sometimes a third party comes forward, takes care of all the creditors and says there's no reason to go forward. But what -- what -- how -- why would you suggest that dis-

missal of the case is in the best interest of creditors? And, again, I didn't read your brief yet, but --

MR. ANDREUZZI: Isn't the standard the plain legal prejudice to the creditors? And aren't voluntary petitions given in all cases except in extraordinary cases?

And in this case, is there any substantial abuse that was committed by -- would be committed by giving this dismissal?

THE COURT: Well, --

MR. ANDREUZZI: In one of your cases --

THE COURT: But -- but let's go back, though. You do agree that dismissal of a Chapter 7 is not a matter of right, like a 13 is.

MR. ANDREUZZI: Correct, Your Honor.

THE COURT: It is a matter in the Court's discretion, and that discretion turns on what the best interest of creditors is.

MR. ANDREUZZI: No, Your Honor. In fact, you -- you made distinctions on these various applications in one or two of your cases. For example, in -- In Re: Mara (phonetic), and I'm -- In Re: Mara which I cited in my brief on Page 6, you [4] want to look at the case in terms of is this really an honest, hard luck debtor who is seeking a bankruptcy action. Or is seeking relief from the Court.

It is not out to, you know, abuse the process and get out of having your assets presented or available to creditors to come and foreclose them. And in that case, you couldn't come to a conclusion that there was a substantial abuse of such as plain prejudice to creditors in such an honest case that it shouldn't be granted.

And another guidepost is that, you know, these voluntary petitions in this case, In Re: Geller (phonetic) that I cite on Page 6, those should be granted in all except extraordinary situations.

THE COURT: Well, what do you -- you know, that doesn't seem to be relevant here. Maybe I'm -- maybe I'm missing something. You seem to be citing cases where somebody else, a nondebtor, is asking to dismiss a case for bad faith or something of that nature.

MR. ANDREUZZI: Yes. This is unusual, I think.

THE COURT: This is a case where the debtor is asking to dismiss a case.

MR. ANDREUZZI: Yes, Your Honor, the debtor wants to dismiss this case. And -- I mean a third factor would be who has objected to this.

THE COURT: Trustee's objecting, right?

[5] MR. ANDREUZZI: None of the creditors have. No creditor has objected.

THE COURT: The Trustee represents the creditors.

MR. ANDREUZZI: And -- and, Your Honor, in -- they haven't filed -- and the fact that they didn't file in these other cases was a significant point that led in the direction that of granting the dismissal.

I mean what prejudice will there be? The property has not changed hands. The property is still available. They have all the creditor remedies. If you're going to proceed with Mr. Schwab's plan, they're all going to get maybe $300 if his auction is very successful.

And if she asked for -- once he made a challenge, as he felt -- this property has extraordinary sentimental

value for apparent sacrifice. Presenter of this property had great financial burdens to themselves. They're all immigrants, having come over from Russia, they're struggling in life. The daughter had some talents, they bought her this equipment so she could start a business. Unfortunately, they couldn't turn a profit.

When she found out the Trustee wanted to take this property away, regardless of the value, she said I can't ever, ever stand the thought or go through this, I want to get out of bankruptcy, I'll find a way to pay the creditors, and I will pay them back the money, I just can't leave this --

[6] THE COURT: Well, why don't you give me as much -- how -- what -- what -- how would the creditors be paid back?

MR. ANDREUZZI: Now --

THE COURT: What vehicle?

MR. ANDREUZZI: Now the debtor has obtained substantial employment. She's an assistant manager at Wal-Mart in Hazleton. She'll be earning $2,080 per month gross, and she gets over $600, instead of $50, for child support. She now has an income of twenty-six hundred and fifty dollars. It's very possible she can now make an arrangement with creditors to, you know, satisfy them so she can keep this extraordinary valuable property in terms of its sentiment and meaning from the family.

THE COURT: Well, extremely valuable. When you say extremely valuable, were the numbers on your schedules accurate?

MR. ANDREUZZI: Yes. Yes, Your Honor. We believe they were. We gave -- not only did we give the purchase price. She submitted her current fair market

value quotations from sellers and that's how she arrived at the values.

THE COURT: So, the numbers were accurate as far as you were concerned.

MR. ANDREUZZI: As far as we're concerned –

THE COURT: They were market value numbers?

MR. ANDREUZZI: That's -- well, we've placed values at the time of the petition at $10,718.

[7] And I -- I believe purchase prices were double that, two or three years prior. In other words, she felt the value of the equipment at the time she filed to be $10,718, which is approximately half value of what she originally paid for it.

THE COURT: Half price?

MR. ANDREUZZI: And she purchased it used. These items were purchased used to begin with, many of them.

THE COURT: You know, let me ask the obvious question, if you don't mind.

MR. ANDREUZZI: I'm sorry, go ahead.

THE COURT: You're saying the debtor wants to keep this property, the debtor has a good paying job. The Trustee has a dispute on valuation. Is there -- have you considered converting this case to Chapter 13?

MR. ANDREUZZI: Uh –

THE COURT: And just doing it under a plan where there's some supervision? And if it doesn't work out, you wind up back in Chapter 7. But if you pay eve-

rybody like you say you're going to pay them, everything goes away?

MR. ANDREUZZI: Well, we've considered it. I don't know, Your Honor, -- I wouldn't be prepared today to, you know, make a commitment to the Court in that regard. But I haven't had a chance to discuss it fully with the client who just seemed to implore me and -- to just get out of bankruptcy, period. And that's all she wanted to do, despite, you know, [8] other options.

THE COURT: Because I think what you're telling me is that if you -- if I dismiss the case, you'll make sure that you pay all the creditors.

MR. ANDREUZZI: Well --

THE COURT: But that's not -- I mean that's --

MR. ANDREUZZI: I don't know if they'll get paid in full, but she can make prebankrupt -- she can make -- she can make, you know, outside bankruptcy arrangements to take care of these people.

THE COURT: But she could have done that before. When did she get the job?

MR. ANDREUZZI: She had no job. The business failed and she lost. She just got this job -- she just started on Tuesday, she began the training in Allentown for it. And now it's more realistic to tell the Court -- a more substantial matter, I imagine, to indicate that she could be able to make arrangements with the creditors if they pursue it or otherwise.

THE COURT: I'm looking for your citation here. I don't think you gave me the right number on Geller.

MR. ANDREUZZI: Which one is that, Your Honor?

THE COURT: Geller.

MR. ANDREUZZI: Pardon me?

THE COURT: Geller. I don't think that's the right number you gave me.

[9] MR. ANDREUZZI: 774 B.R. --

THE COURT: Seven -- seven seventy-four?

MR. ANDREUZZI: Oh, no, 74 B.R. 665.

THE COURT: That's what I put in here and I didn't -- I didn't --

MR. ANDREUZZI: I have -- I have a -- that I have a squib, Your Honor, of -- that I have in the file. If you give me a moment, I can give it to you, of this case, I can double-check the citation. Would you like me to do that, Your Honor?

THE COURT: Well, apparently the citation in your brief isn't the right one.

MR. CHRISTMAN: I have no objection to that moment's delay.

MR. ANDREUZZI: Here.

(Pause)

MR. ANDREUZZI: Here, Your Honor, the citation.

THE COURT: 685, okay.

MR. ANDREUZZI: Oh, does it say 685?

THE COURT: Right.

MR. ANDREUZZI: I'm sorry, Your Honor.

THE COURT: You know, I guess at our ages, our eyesight isn't what it used to be, is it?

MR. ANDREUZZI: I also --

THE COURT: I include myself in that.

[10] (Pause)

THE COURT: I assume you're opposing the request to dismiss the case?

MR. CHRISTMAN: Yes, Your Honor.

MR. ANDREUZZI: Also, I'd like to point out none of the reasons set out in that answer constitute valid legal defenses to a motion to be dismissed. He complains that he already has to pay himself, he has to pay an auctioneer. And he won't get paid in the event that this case is dismissed.

I don't -- there's not one sentence in there that indicates that someone is being prejudiced by the dismissal. I mean if that's his argument, and it's our position that's the only defense, you know, where is it? I think -- the party -- the Trustee is considering only himself in the case and not other creditors, you know.

He wants to pay an auctioneer that wasn't even approved yet. He's arguing that he should pay him even though that auctioneer didn't perform any services.

He also argues that he will have been, quote, "burdened," because the case has been dismissed.

And the vague reference to her employment is not concrete, as I indicated to the Court. But the real -- you know, the Trustee -- in my mind, the Trustee has not a well developed defense to this motion and is not representing creditors.

[11] MR. CHRISTMAN: Your Honor --

MR. ANDREUZZI: Only itself, and his agents. And that's put forth in his answer.

Now, where's the -- what -- what defense? Is he looking out after creditors? Doesn't appear so.

MR. CHRISTMAN: Your Honor, the Trustee on behalf of the -- the Trustee does indicate clearly in his complaint that two administrative creditors, at the very least, wouldn't be paid. Were there have been a claims bar date and claims filed, the Trustee likely would have been happy to allege and cite each claim. However, that hasn't happened yet, but the Trustee feels that it is well within the purview of all parties involved and the Court to realize that the -- without a conversion to Chapter 13, or a liquidation in Chapter 7, there's certainly no distribution in the immediate future to creditors absent some sort of plan that the debtor would come in with if there hadn't been some indication of consents to dismissal by creditors that were -- have joined.

In our review -- I must admit, I don't believe we've reviewed these particular cases. In our review, these motions were most often granted when creditors had actually come in in support of the motion to dismiss.

MR. ANDREUZZI: That's -- that's not entirely correct, Your Honor. If you read -- if you look at the case that I've cited --

[12] MR. CHRISTMAN: I haven't gotten to see those.

MR. ANDREUZZI: -- In Re: Marra, which is from the Middle District, a 1993 case that says, "Ordinarily dismissal will prejudice creditors, it will be denied."

And at the end, it says, "Another factor to be weighed is the absence or presence of creditor consent." And in this case, they didn't even respond.

THE COURT: They did get notice?

MR. ANDREUZZI: Absolutely, Your Honor. Yes. There's -- the return on the notice is 7/15 -- excuse me -- of '05. That was supplied.

And issues that they want to bring up now should have been framed prior to this hearing so you can address them.

(Pause)

THE COURT: This Marra case is really on different facts. Marra, my recollection, was, and my quick review of the filing, Mr. Marra, the Chapter 7 debtor who died in the process of the administration, whose -- whose executor and/or administrator came in and asked that the case be dismissed because the debtor was dead and because there was a vehicle for a liquidation available in the Probate Court. Heirs came in and objected on the theory that if it stays in bankruptcy, we'll be able to get a discharge and our inheritance will get larger.

MR. ANDREUZZI: Well --

[13] THE COURT: I didn't see that as justification for keeping it in 7. I mean there were some extraordinary circumstances under that. But the compelling element was the best interest of creditors, no doubt. Now, my concern in your case is this --

MR. ANDREUZZI: Well, you --

THE COURT: My concern -- and I'll tell you what my -- I'll tell you what my concern in your case is.

MR. ANDREUZZI: We're saying the same thing, best interest.

THE COURT: I'll tell you what my concern is in your case. The debtor is securing a decent job. She's got creditors, which I counted quickly up, of $40,000 worth of unsecured creditors. She has a reasonable job, fortunately. She wants to deal with her creditors. She's in bankruptcy now. And although I can't compel her to convert to Chapter 13, I can't imagine why she wouldn't want to have that kind of protection while she's in 13.

I can't imagine why she wouldn't want this case dismissed and not have that protection, but she has that option.

MR. ANDREUZZI: She -- she wouldn't even be here if she -- if she elected that, she would be able to at this -- you know --

THE COURT: Right.

[14] MR. ANDREUZZI: -- automatically go to the 13.

THE COURT: That's right. The Trustee here is -- I'm not going to question the motivation of the Trustee. I'm going to assume that the Trustee is motivated more by the benefit of the creditors than the Trustee's own benefit. After all, the Trustee is a fiduciary and if I -- if I were to assume that, the Trustee wouldn't even be qualified to stand in front of me. Okay?

So, I have -- I have to assume that the --

MR. ANDREUZZI: You're bending over backwards in pleading your case. They've never even brought the issue up.

MR. CHRISTMAN: Your Honor, if I could assist you. The case in Marra even indicates -- it doesn't indicate the presence or absence -- the absence or presence of creditor objections. It's the absence or presence of creditor consent. And while I did not receive electronic notice of an objection to the motion to dismiss, neither are we being presented with any consent of creditors who have engaged in a payment plan.

THE COURT: And I'll be frank. If the Trustee didn't object here, I certainly wouldn't sua sponte object to a conversion.

Generally speaking, I believe the Trustee does speak for the creditor body. And I would be awfully concerned with outright dismissal of this case.

If your concern is -- and the concern that you're [15] voicing is a concern with losing the personalty, that's easily remedied by a conversion of 13. That will stop the sale in its track.

MR. ANDREUZZI: You may do that.

MR. CHRISTMAN: Your Honor, just --

THE COURT: You have that option. And that's what makes the suggestion that you will take care of the creditors, that's why I give it a little less weight because you had that option and you didn't exercise it.

MR. CHRISTMAN: Your Honor --

MR. ANDREUZZI: But all of the creditors are in a different position than they were prior to the bankruptcy. The assets are still there.

THE COURT: But you know how easy it is to --

MR. ANDREUZZI: Once it's --

THE COURT: You know how easy it is to dissipate assets.

MR. CHRISTMAN: Your Honor, if I -- if I could. Because I'd like to -- a little bit on this, maybe it's outside the area of concern. But my client has objected to conversions to Chapter 13 and Chapter 13 plans in the past and I was here today on one.

However, I believe that he would likely be satisfied if unsecured creditors were the ones being paid in a plan with a 60-month plan that paid as little as $167 a month. And I [16] believe debtor can still convert and be under the old Code because that is where she is now.

THE COURT: Right.

MR. CHRISTMAN: I believe it's the --

THE COURT: And I agree with you.

MR. CHRISTMAN: -- original petition date that controls.

THE COURT: I agree.

MR. CHRISTMAN: So, I'm not saying that we wouldn't object to a conversion or a plan. But I think I can safely indicate that, you know, a plan in the neighborhood of that amount per month for that period would solve the debtor's issues --

THE COURT: Well, I'm not going to compel a resolution. But I think I've articulated the reasons why I'm going to deny your motion to dismiss the case.

Which takes me to the motion to sell. Now, that could be easily mooted if you convert. If you don't want to, we'll deal with a motion to.

MR. CHRISTMAN: Whether it's granted or not, I believe the conversion would still moot the sale.

But on the sale issue -- I mean you've already-- you've already heard, and I don't think more specific evidence -- that debtor or someone on behalf of debtor, at least, purchased these items for around $20,000 around two to three [17] years ago. And while debtor's estimate of that value brought it in at around $10,000, and debtor exempts that $10,178.

The Trustee did not file an objection to the exemption because there was absolutely no basis to object to the amount exempted.

However, even at the meeting of creditors, the Trustee did indicate that the value of the property was in excess of debtor's values.

The contest here today on the sale is is the Trustee bound, not by the debtor's exemption, but by the debtor's valuation, even where the Trustee feels that the amount he could get at auction and -- which is compound by an auctioneer, we don't have much in the way of disputed facts. But, frankly, the auctioneer would not be able to guarantee a $20,000 sale price of the property. His expectations are actually in the neighborhood of around 17 -- $17,200 from sale of the property, sufficient to, even if the Trustee's litigation costs rise, distribute several thousand dollars, perhaps five or more or significantly more if it's a very fortunate auction, to creditors.

And that's over and above paying the debtor our entire exempt interest. The trustee is not seeking to object or in any way overturn the debtor's exemption, but merely is asserting that he is not bound by the debtor's valuation. In certain cases, I believe the Taylor case, the 1992 Supreme [18] Court case, the Court indicated that an unknown amount of property which the Trustee had -- on record had indicated he didn't feel

was worth that -- was worth valuing, it was -- it listed as unknown value, exempted an unknown amount, the Trustee didn't -- didn't object.

However, far more recently, in this -- not in this District, but in the Western District of Pennsylvania, among others, the Trustee has not been bound by debtor's valuation. And the Trustee has not been required to object to a debtor's valuation.

While I must state that the Trustee has in the past, I believe this case mirrors those other cases where the Trustee should not be required to object to valuation and isn't bound by the debtor's valuations. There's no quarrel with the debtor's exemptions. Were she to seek to amend them and move them around, there may be. But it doesn't exist at present. And the Trustee feels that the sale offer a significant benefit to the estate, even after paying debtor's exempt interest of $10,718 in full.

THE COURT: Okay. So, basically you're suggesting that the debtor's schedules only exempted a dollar amount of 10,000 plus, not the entire breadth of the personal property described here.

MR. CHRISTMAN: Yes, Your Honor.

THE COURT: Okay. What I have here -- did you want [19] to respond to that at all?

MR. ANDREUZZI: Well, Your Honor, I don't think it's -- what Attorney Christman says is accurate. First of all, at the time -- prior to the first meeting of creditors, the Trustee, on its own initiative, sent an appraiser out to examine and appraise the property. And at the time of the meeting, he had higher valuations. He indicated verbally that his valuation was 17,000 -- approximately $17,333.

My client's valuation was $10,718. She claimed all of the property.

If you'll look at Taylor, this is a very similar situation. The -- the debtor told the Trustee that her claim was worth 90 to $110,000. And they had settlement offers to that effect.

And they disclosed this to the Trustee, the Trustee just didn't believe them or didn't think there was merit. He never challenged the value. Then when the jackpot came in, he ran in and said, not only should I be permitted to get all the money, Your Honor, that I should also -- only a small portion of the proceeds were exempt. However, he didn't challenge the valuations, and -- challenged the validity, not only challenged his -- you know, the exemption itself, but also the validity.

The validity also is a -- is two-thing. The one, you're right -- under the law, you're right, the values. This lady claimed all of her property was exempt. How is she to [20] contest his values? He has the burden of objecting to the value so that he can have a sale based on higher values.

And unless the cases he cites were cases like where the value has popped up at later times and the Trustee had no idea what the value was at the time of the meeting. Once he has the values in front of him, he's obligated to go ahead and file objections. And then, hey, we're going to have a sale because this property is going to yield much more money. But having -- not having done it, he's stuck with both values --

THE COURT: I understand your point.

MR. ANDREUZZI: All right. The other point -- and that's the distinguishing part between the cases they cite to support their proposition that they don't

have to be concerned with values. They could just stand by, let it go through.

Another -- and then have a sale regardless without having her an opportunity to defend on the values or without having her get her sentimental property or without having her claim all of the property that they want her to part with.

She could have amended -- she could have filed amendments, got rid of at least $3,000 of the perishable goods that she claimed and put this somewhere else on this property. There's a property -- she has exemptions up to $14,500. He sat back and now he arbitrarily decides in the case he's going to have a sale, even though he knew --

THE COURT: I understand your point.

[21] MR. ANDREUZZI: -- he had the basis to challenge it and he never did.

Furthermore, if he doesn't do it, there's case law in Pennsylvania that says after 30 days, that property is no longer estate property. That reverts back to the creditor at that point in time. He didn't do it in 30 days. She has all of the property. It has already reverted to her.

They cited the case from the 9th Circuit that says that it has to be reinvested at a later time potentially or something, but that's not the law in Pennsylvania. There are two cases out there which are cited, Egan and Berry (phonetic) which have specified after 30 days, the property reverts back.

If there's a fraud or something, let them come in and object and get it, but he didn't do that. He evaded the process set out in 4003(c), and now he wants the fruits of his lack of due process in the case.

THE COURT: I understand your issue. Let me -- let me suggest this. Well, let's take a look at the schedules first. I'm looking at the B schedule here, Schedule B, personal property with regard to the items in question. We look down to Item 27, which is the business equipment at issue, and that's identified on Line Item 27 as, quote, "See attached list of business equipment in the column of description and location of property."

And sliding over to the next column, that says, [22] current market value of debtor's interest in property without deducting any secured claim or exemption, we have the number $10,718.

Now, I think this can only be understood in the context of how it's listed in Schedule C, which is the exemption schedule. And before I get into that, I will indicate that Schedule B then has a handwritten list of equipment that is specifically identified and valued by presumably the debtor's estimate. It also includes a value -- a gratuitous column marked, paid. But it also has an identification of value. And presumably the 10,718 is a total of the last column on that handwritten slip.

If we move over to Schedule C, property claimed as exempt, and with regard to the exemption at issue, I draw the parties' attention to the next to the last item on Schedule C, which basically says see attached list of business equipment, cites to 11 U.S.C. 522(d)(5). Identifies two items in the column marked value of claimed exemption, eighteen fifty and eighty-eight sixty-eight, which I presume totals the $10,718.

The total value of the property without deducting exemptions is identified as $10,718. The value of claimed exemptions totals $10,718. The value on Schedule B totals $10,718.

So, Schedule C is -- more specifically is identified as property claimed as exempt.

[23] Column left identified as description of property, the property is described as see attached list of business equipment. It's only the valuation that the Trustee challenges, not the list of property exempt.

I understand what the Trustee's argument is precisely, and I've had an opportunity to recently review that argument in a case that was decided within the last two weeks called In Re: Daly -- In Re: Arthur Daly, which I did write a written opinion. I cited a couple of cases, including Taylor, as a comparison where the property scheduled as property was valued as unknown, and the property exempted was valued as unknown, but it was the identical item -- described item of property, ergo. My understanding that if that property is exempted 30 days after the 341, it leaves the estate and becomes exempt property, absent an objection. I understand there was no objection to exemptions here.

MR. CHRISTMAN: No, Your Honor.

THE COURT: If I'm going to be consistent -- and by the way, I did cite to another case. I don't have the Daly opinion in front of me, but I cited to another case that valued the property on the schedules at one dollar of these -- identical property on the exemption schedule as one dollar. The valuations were unimportant, except as a measurement of the extent to which the debtor was exempting property.

I know there's an argument out there by trustees and [24] by other -- held by other courts that the -- somehow the property identified as exempt is really the last column, but that's not what the forms say. The

forms say property declared as exempt and to see attached list. So, they're exempting all the property.

If they want to exempt a portion of it, they should have said that. If the Trustee believes that the -- all the property cannot be exempt, they should object to it.

I know it's a terrible burden on trustees, but that's why they get the big dollars. And I say that facetiously.

MR. CHRISTMAN: Your Honor --

THE COURT: I know the Trustee gets almost nothing for these cases, but that's how I read the rules.

MR. CHRISTMAN: Your Honor, I'd also like -- we have also submitted a brief. I don't know if you had a chance to review that, but we have similar cases here with Bonor (phonetic) in the 9th Circuit, Zipansic (phonetic), that's the 9th Circuit, a 1992, we have Zipansic, 2001 in Florida. And the Western District of Pennsylvania in Clark. Once again, seven thousand five exempt, the Trustee had no reason to object and no cause to believe it would deprive the estate of any more than 7,500.

THE COURT: I did review those cases relative to my opinion -- my opinion in Daly. And, frankly, I rejected them.

So, I'm going to incorporate the relevant reason in [25] In Re: Arthur Daly. Again, I don't have a citation, but it was an opinion that was written within the last two weeks as a reason why I'm denying the motion to sell property. Okay? Anything further?

MR. ANDREUZZI: No, Your Honor. Thank you.

THE COURT: Okay.

MR. CHRISTMAN: Do you have a spelling of Daly?

THE COURT: Spelling of the case?

MR. CHRISTMAN: Yeah, if you -- if you knew off-hand, if you recalled?

THE COURT: In Re: Arthur Daly.

MR. CHRISTMAN: Is it D --

THE COURT: D-A-L-Y.

MR. CHRISTMAN: D-A-L-Y. Okay, that is the spelling that I had.

MR. ANDREUZZI: Thank you, Your Honor.

MR. CHRISTMAN: Thank you, Your Honor.

THE COURT: Thank you.

# PETITIONER'S BRIEF

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(6)

No. 08-538

Supreme Court, U.S.
FILED
JUL 10 2009
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner*,

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## BRIEF FOR PETITIONER

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
LESLIE S. GARTHWAITE
NATHAN A. BRUGGEMAN
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

BOTH 4TE@T8

5324

57

## QUESTION PRESENTED

Whether a Chapter 7 trustee is required by Federal Rule of Bankruptcy Procedure 4003(b) and this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), to object to a debtor's claimed exemption when the claimed exemption itself is proper, but the debtor incorrectly lists the value of the exempt property as being equal to the amount of the exemption.

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IN THE

# Supreme Court of the United States

No. 08-538

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner*,

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## BRIEF FOR PETITIONER

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a-18a) is reported at 534 F.3d 173 (3d Cir. 2008). The opinion and order of the United States District Court for the Middle District of Pennsylvania (Pet. App. 19a-25a, 26a) and the order of the United States Bankruptcy Court for the Middle District of Pennsylvania (Pet. App. 27a-28a) are unreported.

## JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Court of Appeals entered its judgment on July 21, 2008. The petition for a writ of certiorari was filed on October 20, 2008, and granted on April 27, 2009.

## STATUTORY PROVISIONS INVOLVED

The text of the applicable provisions—11 U.S.C. § 522 and Federal Rule of Bankruptcy Procedure 4003—is reproduced in full in the statutory appendix, contained *infra* at pp. 1a-12a.[1]

## INTRODUCTION

Section 522 of the Bankruptcy Code permits an individual debtor to exempt certain property from her estate. These exemptions fall into two categories. Certain property—such as professionally prescribed health aids and an unmatured life insurance contract—is exempt "in kind," meaning that the debtor is permitted to retain the asset (rather than have it liquidated with the proceeds distributed to creditors) regardless of the asset's value. *See* 11 U.S.C. § 522(d)(7), (9). Other exemptions are subject to monetary limits. For example, a debtor may exempt her interest, "not to exceed

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[1] The versions of Section 522 and Rule 4003 set forth in the statutory appendix, and cited throughout this Brief, were the versions in effect at the time Respondent Nadejda Reilly filed her bankruptcy petition in April 2005, and therefore apply to this case. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1501, 119 Stat. 23, 216. Both Section 522 and Rule 4003 were subsequently amended. *See id.*; Fed. R. Bankr. P. 4003 advisory committee note (2008 amendments). Those amendments are immaterial to the issues raised in this case.

$2,950 in value, in one motor vehicle," *id.* § 522(d)(2), her interest, "not to exceed $1,225 in value, in jewelry held primarily for the personal ... use of the debtor," *id.* § 522(d)(4), and her interest, "not to exceed $1,850 in value, in any implements, professional books, or tools" of the debtor's trade, *id.* § 522(d)(6).[2]

In order to claim an exemption, the debtor must file a list in which the debtor sets out her claimed exemptions on the form prescribed by the Bankruptcy Rules. *See* 11 U.S.C. § 522(*l*); Fed. R. Bankr. P. 4003(a); *id.* 1007(b). That form requires the debtor—both for property that may be exempted "in kind," and for property in which the permitted exemption is subject to dollar limits—to identify the property in which she claims an exempt interest and to provide both the "value of [the] claimed exemption" and the "current market value of [the] property without deducting [the] exemptions." Fed. R. Bankr. P. Form 6, Schedule C (1991), *reprinted at* 135 F.R.D. 713, 737 (1991); JA 57a.

Subject to certain exceptions not relevant here, "[a] party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded." Fed. R. Bankr. P. 4003(b). Unless the trustee or another party in interest objects, the "property claimed as exempt on such list"—in the case of "in kind" exemptions, the entire item, and in the case of monetary exemptions, the debtor's interest in the

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[2] The exemption amounts are adjusted every three years, *see* 11 U.S.C. § 104(a), and were last adjusted in 2007, *see* 72 Fed. Reg. 7082, 7082 (Feb. 14, 2007). The amounts listed in the text are the pre-2007 amounts, *see id.*, which apply to Reilly because she filed her bankruptcy petition in 2005, *see* 11 U.S.C. § 104(c).

property up to the statutory dollar limit—"is exempt." 11 U.S.C. § 522(*l*).

In this case, respondent Nadejda Reilly, a Chapter 7 debtor, claimed an exemption for the tools of her trade—kitchen equipment. On the official form, she claimed an exemption of $10,718, and also listed the value of the equipment as $10,718. JA 58a. That amount was within the cap set by Section 522 (combining Reilly's Section 522(d)(6) exemption for tools of the trade with her Section 522(d)(5) "wild-card" exemption). Reilly's claimed monetary exemption was therefore proper, and Petitioner William Schwab, the Chapter 7 trustee administering Reilly's bankruptcy case, accordingly did not object to it. Believing that the equipment might be worth considerably more than $10,718, however, Schwab sought to sell the equipment and distribute any proceeds in excess of Reilly's $10,718 exempt interest to creditors.

The court of appeals held that Schwab's failure to object to Reilly's claimed $10,718 exemption within the 30-day deadline set by Rule 4003 barred him from later recovering for the estate any value in the equipment in excess of $10,718. It reasoned that, by listing the value of the equipment in an amount equal to the amount of her claimed exemption, Reilly had effectively claimed an "in kind" exemption in the entire value of the equipment, whatever that value ultimately turned out to be. It therefore held that Schwab was required to object to Reilly's claimed exemption even though, on its face, the exemption claimed was entirely proper.

For that conclusion, the court of appeals relied on this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), opining that *Taylor* "controlled." Pet. App. 11a. The court of appeals "read *Taylor* to

mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt." Pet. App. 14a.

The court of appeals' reliance on *Taylor* was misplaced. *Taylor* stands for the unsurprising proposition that where a debtor's claim of exemption is in fact objectionable, a trustee is required to assert his objection before the deadline set forth in Bankruptcy Rule 4003. The trustee in *Taylor*, having failed to file a timely objection to a claim of exemption that all parties agreed was objectionable, asked the Court to find an exception to the deadline for cases in which the debtor had no colorable basis for claiming the exemption. This Court declined to do so, enforcing the deadline as written.

That decision says nothing at all about the circumstance presented in this case—where the debtor's claim of exemption is proper, such that the trustee has no reason or occasion to assert an objection. *Taylor* thus has no application here.

Further, contrary to the court of appeals' statement that "it was important to the *Taylor* Court that the debtor meant to exempt the full amount of the property by listing 'unknown' as both the value of the property and the value of the exemption" (Pet App. 11a), *Taylor* makes no mention of the debtor's valuation of her property. Indeed, the debtor's list of exemptions in *Taylor* did not even provide the debtor's estimation of the property's value, only the amount of the claimed exemption, which the debtor listed as "unknown."

Because Reilly's claimed exemption was entirely proper, neither Section 522 nor Rule 4003 required

Schwab to object to it within 30 days of the creditors' meeting in order to retain his ability to liquidate the kitchen equipment and distribute to creditors the realized value in excess of the amount Reilly specifically and correctly claimed as exempt. The court of appeals' contrary conclusion is unmoored from the text of the statute and rules and would be wholly unworkable in practice.

## STATEMENT OF THE CASE

### A. Statutory Background

*Exemptions in bankruptcy.* Federal bankruptcy law provides a means for an "honest but unfortunate debtor" to be relieved of her obligations to creditors and obtain a fresh start. *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934); *see also Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). The fundamental bargain of a Chapter 7 bankruptcy is that in exchange for the discharge of all pre-bankruptcy debts, an individual debtor is required to turn over all of her non-exempt property to a Chapter 7 trustee for distribution to creditors. *See Marrama*, 549 U.S. at 367.

The filing of a Chapter 7 bankruptcy petition creates a bankruptcy estate, which includes (subject to certain narrow exceptions) "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). A Chapter 7 trustee is then appointed to liquidate the property of the estate and distribute the proceeds to creditors in accordance with their statutory priority. *See id.* §§ 701, 704(a)(1), 726. A debtor who successfully navigates the Chapter 7 process obtains a discharge of her prepetition debts. *Id.* § 727. The discharge effectuates the debtor's "fresh start" by "voiding any past or future judgments on [pre-bankruptcy] debt and by operating as an injunc-

tion to prohibit creditors from attempting to collect or to recover the debt." *Tennessee Student Assistance Corp.* v. *Hood*, 541 U S. 440, 447 (2004).

To permit a debtor to obtain certain basic necessities and to facilitate the "fresh start" policy, the Bankruptcy Code provides that some of the debtor's property—such as her car or home, up to certain monetary values—is exempt from inclusion in the bankruptcy estate and distribution to creditors. *Rousey* v. *Jacoway*, 544 U.S. 320, 325 (2005); *see* 11 U.S.C. § 522. Subject to certain exceptions, "property exempted [from the bankruptcy estate] is not liable during or after the case for any debt of the debtor that arose ... before the commencement of the case." 11 U.S.C. § 522(c).

Section 522 of the Bankruptcy Code governs exemptions. Under Section 522, a debtor may elect either the exemptions that would be available under applicable state and federal non-bankruptcy law or the federal bankruptcy exemptions specified in that section, unless a debtor's home State "opts out" of the federal exemptions. 11 U.S.C. § 522(b).[3]

Section 522(d) specifies the types of property in which a debtor can claim an exempt interest under federal bankruptcy law. With respect to certain types of property, it also sets a cap on the monetary amount of any claimed exemption. For example, under the federal homestead exemption, a debtor may exempt "[t]he debtor's aggregate interest, not to exceed $18,450 in

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[3] Debtors living in opt-out States may not invoke the federal bankruptcy exemptions and are limited to the exemptions provided in applicable state and federal non-bankruptcy law. *See* 11 U.S.C. § 522(b); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991).

value, in real property ... that the debtor ... uses as a residence." 11 U.S.C. § 522(d)(1). Similarly, a debtor may exempt her interest, "not to exceed $2,950 in value, in one motor vehicle," *id.* § 522(d)(2), her interest, "not to exceed $1,225 in value, in jewelry held primarily for the personal ... use of the debtor," *id.* § 522(d)(4), and her "interest, not to exceed $1,850 in value, in any implements, professional books, or tools, of the trade," *id.* § 522(d)(6). In addition to the specifically enumerated monetary exemptions, Section 522(d) also permits a debtor to claim the so-called "wild-card" exemption, under which a debtor may exempt her "interest in any property, not to exceed in value $975 plus up to $9,250 of any unused amount" of the federal homestead exemption. *Id.* § 522(d)(5).

In contrast, other types of property are exempt "in kind" without any cap on the amount that may be exempted. For example, a debtor may exempt "[p]rofessionally prescribed health aids for the debtor," 11 U.S.C. § 522(d)(9), "[a]ny unmatured life insurance contract owned by the debtor," *id.* § 522(d)(7), or the "debtor's right to receive ... an award under a crime victim's reparation law," *id.* § 522(d)(11)(A), without any limitation on the amount of the exemption.

The determination to subject many (indeed, most) of the statutory exemptions to specific monetary caps reflects a specific congressional judgment about how to strike the balance between providing for an individual debtor and the repayment of creditors. For example, by limiting the exemption in an automobile to $2,950, Congress permitted a debtor who owned an older, relatively inexpensive vehicle to keep the vehicle itself (because trustees, in practice, will not liquidate an asset that will not generate proceeds in excess of the debtor's exempt interest). But a Chapter 7 debtor who owns a

late-model luxury car cannot keep the vehicle: she must turn the car over to the trustee, who will sell the car, pay the debtor $2,950 in cash (representing the debtor's exempt interest in the vehicle), and distribute the excess value to creditors.

The process for claiming exemptions, and for objecting to claimed exemptions, is spelled out in the Federal Rules of Bankruptcy Procedure. A debtor is required to "file a list of property that the debtor claims as exempt" at the outset of the bankruptcy case, 11 U.S.C. § 522(*l*), as one of the schedules that must accompany the bankruptcy petition, Fed. R. Bankr. P. 4003(a). That schedule—Schedule C—must be filed in the format "prescribed by the Official Forms." *Id.* 1007(b); *see id.* 4003(a).

Schedule C—"Property Claimed As Exempt"—first requires the debtor to state whether she is invoking the federal bankruptcy exemptions or applicable state and federal non-bankruptcy exemptions. The form then provides a space for the debtor to identify the specific exemptions claimed. That portion of the form is divided into four columns. The first column requires the debtor to provide a "description of [the] property" in which she claims an exemption. The second column requires the debtor to "specify [the] law providing each exemption." The third column requires the debtor to list the "value of [the] claimed exemption." And the fourth asks the debtor to provide the "current market value of [the] property without deducting exemptions." Fed. R. Bankr. P. Form 6,

Schedule C (1991), *reprinted at* 135 F.R.D. 713, 737 (1991); JA 56a-57a.[4]

Here, as elsewhere in bankruptcy law, the term "property" is used very broadly. It includes not only tangible items themselves, but may also include the debtor's partial interest in such property. *Cf.* 11 U.S.C. § 541(a)(1) ("property of the estate" includes "all legal or equitable interests of the debtor in property"). Accordingly, because many of the statutory exemptions are subject to monetary limits, the "property" claimed as exempt need not refer to a specific object in its entirety. For example, in a case in which the debtor fills out Schedule C to claim a $2,950 exemption in a luxury car whose value she lists as $50,000, the "property that the debtor claims as exempt," *id.* § 522(*l*), is her exempt interest—$2,950—in that vehicle.

Federal Rule of Bankruptcy Procedure 4003 further sets out the process for objecting to claimed exemptions. It provides that "a party in interest," including a Chapter 7 trustee, "may file an objection to the list of property claimed as exempt" within 30 days of the creditors' meeting required by Section 341 of the Bankruptcy Code (or within 30 days after any amendment to the list of exemptions, whichever is later). Fed. R. Bankr. P. 4003(b). In the typical case, a trustee is able to ascertain from reviewing the schedules themselves whether the debtor's claim of exemption is le-

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[4] Form Schedule C was revised in 2005 to ask the debtor to provide the "current value" (rather than the "current market value") of the property. *See* Fed. R. Bankr. P. Form 6 advisory committee note (2005 amendment). The language quoted in the text appears on the version of Schedule C used in this case. *See* JA 57a.

gally valid.[5] Where the trustee has a basis for objecting (such as a case in which the debtor claims an exemption in property that is not exemptible under applicable law, or claims an exemption in an amount that exceeds an applicable monetary limit), a trustee will typically assert an objection within 30 days of the initial meeting of creditors. The time to object to an exemption may be extended, however, "for cause ... if, before the time to object expires, a party in interest files a request for an extension." *Id.* The party asserting the objection bears the burden of proving that the challenged exemption is improper. *Id.* 4003(c). If no party in interest objects, "the property claimed as exempt [by the debtor] is exempt," 11 U.S.C. § 522(*l*), and the exemption cannot later be contested, *see Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 642 (1992).

*The role of the Chapter 7 trustee.* Shortly after a Chapter 7 petition is filed, the United States Trustee appoints an interim trustee to administer the bankruptcy estate. *See* 11 U.S.C. §§ 323, 701, 704. The trustee plays a central role in a Chapter 7 bankruptcy:

> The trustee is a fiduciary charged with protecting the interests of all estate beneficiaries .... To properly represent the estate, the trustee must secure for the estate all assets properly obtainable under applicable provisions of the Bankruptcy Code, object to the debtor's discharge where appropriate, defend the estate

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[5] Some claims of exemption may require some measure of factual investigation. For example, a trustee may need to conduct such an investigation in order to determine whether a debtor's walker is a "[p]rofessionally prescribed health aid[]" exempt under 11 U.S.C. § 522(d)(9).

> against improper claims or other adverse interests, and liquidate the estate as expeditiously as possible for distribution to creditors.

U.S. Dep't of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* 6-2 (2002);[6] *see* 11 U.S.C. § 704 (delineating trustee's statutory duties).

One of the interim trustee's first duties is to convene the meeting of the debtor's creditors required by Section 341 of the Bankruptcy Code. 11 U.S.C. § 341(a). The trustee is required to hold the Section 341 meeting "no fewer than 20 and no more than 40 days after the [filing of the petition]." Fed. R. Bankr. P. 2003(a). That meeting is "the official forum where the debtor must appear and answer under oath questions from the trustee, creditors, and other parties in interest regarding the estate." *Handbook for Chapter 7 Trustees* 7-1. At the Section 341 meeting, creditors may elect to replace the interim trustee with a trustee of their choosing. 11 U.S.C. § 702(b), (c). If not, the interim trustee serves as the trustee in the case. *Id.* § 702(d).

The trustee must determine whether the case is an "asset case" or a "no-asset case," that is, whether there is sufficient non-exempt property in the estate to justify liquidating the property and distributing the proceeds to creditors. If the trustee determines that the case is a no-asset case, he submits a No Distribution Report ("NDR"). *Handbook for Chapter 7 Trustees* 8-1. "An NDR certifies that the trustee has reviewed the schedules, investigated the facts, and determined that

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[6] The *Handbook for Chapter 7 Trustees* is available at http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/7handbook1008/Ch7_Handbook.pdf.

there are no assets to liquidate for the benefit of creditors. It also certifies that the trustee has examined the debtor's claimed exemptions and concluded that there is no purpose served [by] object[ing] to their allowance." *Id.*; *see* 11 U.S.C. § 704(a)(9). "Historically, the vast majority (about 95 to 97 percent) of chapter 7 cases yield no assets." U.S. Dep't of Justice, U.S. Trustee Program, *Preliminary Report on Chapter 7 Asset Cases 1994 to 2000*, at 7 (June 2001).

In an asset case, the trustee will generally liquidate the estate property through either a private sale or public auction if the "assets will generate sufficient proceeds to ensure a distribution to unsecured creditors, priority or general." *Handbook for Chapter 7 Trustees* 8-17. This necessarily requires the trustee to engage in a cost/benefit analysis: if the cost of liquidating an asset is likely to consume most or all of the value in excess of the debtor's exempt interest, the trustee may determine that liquidating the asset will not benefit creditors and may therefore elect to abandon the property to the debtor. *See* 11 U.S.C. § 554; *Handbook for Chapter 7 Trustees* 8-3 ("Property should be abandoned when the total amount to be realized [from its liquidation] would not result in a meaningful distribution to creditors or would redound primarily to the benefit of the trustee and professionals.").

When the trustee is ready to close the case, he must prepare and submit, for the court's approval, a Trustee's Final Report in which he lays out, among other things, the disposition of all the estate assets and a proposal for distribution of the proceeds to creditors. *See* 11 U.S.C. § 704(a)(9); Fed. R. Bankr. P. 5009. After the debtor receives the value of her exemptions, the trustee distributes the remaining proceeds to creditors

pursuant to the statutory priority scheme. *See* 11 U.S.C. § 726.

A Chapter 7 trustee's compensation turns on the value distributed to creditors. The trustee receives a nominal portion—$60—of the debtor's filing fee in every case. *See* 11 U.S.C. § 330(b). While the bankruptcy court may award a Chapter 7 trustee "reasonable compensation" paid out of the bankruptcy estate, a trustee's compensation is capped at a certain percentage of the money that was distributed to the debtor's creditors. *Id.* § 326(a). The result is that, in no-asset cases, the trustee receives only $60 in compensation for administering the estate.

**B. Factual Background**

On April 21, 2005, Nadejda Reilly—who owned a catering business in Conyngham, Pennsylvania—filed a petition for Chapter 7 relief. JA 9a; *see* JA 26a-136a. Reilly elected to claim the federal bankruptcy exemptions.[7] JA 56a. Reilly's assets included kitchen equipment from her business. JA 49a, 51a-55a. On her Schedule C ("Property Claimed as Exempt"), Reilly claimed as exempt a monetary interest in the kitchen equipment amounting to $1,850 under Section 522(d)(6), the tools of the trade exemption, and a monetary interest in the equipment amounting to $8,868 under Section 522(d)(5), the wild-card exemption. JA 58a. In the column headed "Value of Claimed Exemption," Reilly thus claimed a total exemption of $10,718 for the equipment. In the column headed "Current Market Value of Prop-

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[7] Pennsylvania, Reilly's domicile and the location of her bankruptcy filing, has not opted out of the federal exemption scheme. *See In re Brannon*, 476 F.3d 170, 174 (3d Cir. 2007).

erty Without Deducting Exemptions," Reilly listed the market value of the equipment—incorrectly, as it turned out—as $10,718, the same amount as the claimed exemption. JA 58a. In addition to allocating $8,868 of her wild-card exemption to her kitchen equipment, Reilly also allocated $2,306 of her wild-card exemption to exempt food goods on hand at her restaurant (JA 58a) and $26 to exempt cash held in bank accounts (JA 57a).[8]

William Schwab was appointed trustee for Reilly's bankruptcy case. JA 9a. He suspected, but did not know, that Reilly's kitchen equipment might be worth more than $10,718. Before the Section 341 meeting, Schwab had an auctioneer appraise the equipment. *See* JA 164a. The auctioneer thought that the equipment could be worth at least $17,000, perhaps materially more. JA 164a. Schwab, however, had no objection to Reilly's "list of property claimed as exempt," Fed. R. Bankr. P. 4003(b). JA 163a. Section 522(d)(6) permits the debtor to exempt an interest up to $1,850 in tools of the trade, including the kitchen equipment here, and Reilly was entitled to invoke the wild-card exemption of $8,868 under Section 522(d)(5). Schwab accordingly acknowledged that Reilly was entitled to exempt an interest of $10,718 in her kitchen equipment. *See* JA

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[8] In fact, the $975 exemption in food goods listed at the bottom of Reilly's Schedule C exceeded the amount that Reilly was entitled to claim under the wild-card exemption. *See* 11 U.S.C. § 522(d)(5). Because perishable items such as food goods, by their nature, do not preserve their value long enough to be marketed and sold so as to generate value for creditors, trustees in bankruptcy rarely object to claimed exemptions in such goods. *See Handbook for Chapter 7 Trustees* 8-2, 8-3.

164a. He therefore made no objection to Reilly's list of property claimed as exempt.

Schwab held the Section 341 meeting of creditors on June 22, 2005. JA 11a. At that meeting, Schwab indicated that there might be value in Reilly's kitchen equipment in excess of the exempt amount, and said that he would seek to auction the equipment, providing Reilly with her exempt interest of $10,718, and distributing any excess value to creditors. JA 137a; *see also* JA 141a-143a. On June 29, 2005, Reilly moved to dismiss her bankruptcy case. That motion makes no claim that Reilly was entitled to, or intended to, exempt her kitchen equipment in its entirety. To the contrary, she acknowledged that at her Section 341 meeting, it had been determined that she was "not entitled to a full exemption in her tools of the trade/personal property in reference to her business equipment" (JA 137a), and indicated that she therefore "no longer wishes to continue with her petition in bankruptcy" (JA 137a-138a).

The bankruptcy court, however, did not immediately act on Reilly's motion to dismiss the bankruptcy case, and on August 10, 2005, Schwab filed a motion with the bankruptcy court seeking permission to auction Reilly's kitchen equipment so that he could turn over the $10,718 in exempt value to Reilly and distribute the excess value, less costs, to her creditors. *See* JA 13a, 141a-143a.

In response to Schwab's motion to sell, Reilly argued for the first time that because the amount of the exemption she claimed in the kitchen equipment was the same as her estimate of the equipment's value, she had in fact claimed that the equipment was exempt in full. JA 165a; *see also* JA 145a-147a. Because no party in interest had objected to the list of exempt property

within 30 days of the creditors' meeting, Reilly contended, the equipment was fully exempt regardless of its actual value, and Schwab was thus barred from selling it. JA 146a, 165a-166a.

The bankruptcy court denied Reilly's motion to dismiss (JA 162a), but sustained Reilly's objection to the sale of her property (Pet. App. 27a-28a; JA 167a-169a). Schwab appealed to the district court, which affirmed. Pet. App. 25a, 26a. Schwab then appealed to the Court of Appeals for the Third Circuit, which also affirmed. The court of appeals invoked this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), as "[t]he starting point for [its] analysis." Pet. App. 7a. In *Taylor*, this Court held that when a debtor improperly claimed as exempt the proceeds of a lawsuit, listing the value of the exemption as "unknown," the trustee's failure to object within the time period set out by the rules meant that the proceeds of the suit were fully exempt. 503 U.S. at 643. *Taylor* rejected the trustee's argument that, if an exemption is not permitted by Section 522, a trustee need not object within the statutory deadline to have the exemption disallowed. *Id.* at 643-644.

The court of appeals "read *Taylor* to mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt." Pet. App. 14a. Concluding that "this case [is] controlled by *Taylor*" (Pet. App. 11a), the court of appeals held that Schwab was required to object to Reilly's claimed exemption—even though he had no objection to the exemption Reilly actually claimed—and that his failure to do so

meant that Reilly was entitled to exempt the full value of the kitchen equipment (Pet. App. 17a-18a).

## SUMMARY OF ARGUMENT

The court of appeals' holding is erroneous. It stems from a misapprehension of the statutory scheme and of this Court's decision in *Taylor*. The deadline for objections set by Rule 4003 applies only to objections to "the list of property claimed as exempt." Fed. R. Bankr. P. 4003(b). Section 522 likewise provides only that if no party makes such an objection, "the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). In this case, however, "the list of property [Reilly] claimed as exempt" was entirely unobjectionable: Reilly sought to exempt a $10,718 interest in her kitchen equipment, which she was entitled to do under the statute. And Schwab does not dispute that "the property claimed as exempt" on Reilly's schedules—a $10,718 interest in the equipment—is in fact exempt. The statute and rule go no further: they do not require a trustee to object to a debtor's valuation of the property in which she claims to have an exempt interest. And they do not require the trustee to object to a claim of exemption that is valid on its face in order to liquidate and distribute to creditors value in property beyond what the debtor has specifically claimed as exempt—and that the debtor is not entitled to exempt. *See infra* Part I.A.

The court of appeals concluded that, by listing the same value for her claimed exemption in the kitchen equipment and for the equipment itself, Reilly had in fact claimed an exemption in the entire value of the equipment, regardless of what that value might be. But the court articulated no reason why that should be the case. Reilly specified that she sought to exempt

$10,718—an amount the statute permitted her to exempt. Nothing in her schedules could have put Schwab on notice that she claimed an exemption in a greater amount. And, contrary to the court of appeals' belief, this Court's decision in *Taylor* v. *Freeland & Kronz* provides no support for that incongruous conclusion. The *Taylor* Court made no mention at all of the debtor's valuation of the property she claimed as exempt. Indeed, the debtor in *Taylor* did not even list a value for the property on her list of exemptions, since the form used at that time (the predecessor to Schedule C) did not require the debtor to do so. Rather, the debtor claimed an exemption in the proceeds of a lawsuit, and listed the value of the *exemption* as "unknown." As everyone in *Taylor* agreed, that claimed exemption was objectionable on its face. This Court therefore held that the trustee was required to object to it within the 30-day deadline set by Rule 4003. That holding, while plainly correct, is irrelevant to this case, which asks whether a trustee must object to a clearly *proper* exemption in order to preserve the ability to distribute additional value to creditors. As the statute and rules themselves make plain, there is no such requirement. *See infra* Part I.B.

Nor would such a requirement be sensible or workable in practice. Chapter 7 trustees—who handle hundreds of cases every year—lack the time or resources to investigate the value of every item of property in which a debtor claims an exemption, and thus to determine if such an objection is necessary, within the time frame set out by Rule 4003. And forcing them to do so would create perverse incentives for debtors: those who accurately value their assets would receive only the exemptions to which the statute entitles them, while those who improperly undervalue their assets

would, if an overburdened trustee failed to object, reap a windfall, retaining property that should go to their creditors. Neither the Bankruptcy Code nor the Rules require such a result. *See infra* Part II.

## ARGUMENT

### I. SCHWAB WAS NOT REQUIRED TO OBJECT TO REILLY'S PROPERLY CLAIMED EXEMPTION IN ORDER TO LIQUIDATE PROPERTY WHOSE ACTUAL VALUE EXCEEDED THE CLAIMED EXEMPTION

#### A. The Bankruptcy Code And Rules Set A Deadline Only For Objections To "The List Of Property Claimed As Exempt," Not To The Valuation Of The Property

The text of the Bankruptcy Code and Rules themselves make clear that Schwab was not required to object to Reilly's facially valid exemption in order to liquidate property worth more than the claimed exemption. Bankruptcy Rule 4003 sets a deadline only for objections to "the list of property claimed as exempt." Fed. R. Bankr. P. 4003(b). In the case of exemptions that are subject to monetary caps (as opposed to "in kind" exemptions), that "list of property claimed as exempt" will typically include the debtor's exempt interest in items of property, up to specific statutory dollar values.

Section 522 provides that if no objection is filed to that list of property, "the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Neither the statute nor the Rule sets a deadline for anything other than objections to "the list of property claimed as exempt" by the debtor. The court of appeals' holding, requiring a trustee to object to the debtor's valuation of her property, even if the claimed exemption is entirely

proper, thus finds no home in the text of the Code or Rules.

In this case, there was nothing objectionable about Reilly's claimed $10,718 exemption in her kitchen equipment. Reilly has never suggested that there is any statutory basis for exempting her kitchen equipment "in kind." And there is not and never has been any reason to read her Schedule C to claim an entitlement to such an exemption. Rather, Reilly asserted an exemption in a $10,718 interest in that equipment. That assertion was proper. Reilly's interest in the equipment up to $1,850 could properly be exempted under the "tools of the trade" exemption of Section 522(d)(6), and the remaining $8,868 could properly be exempted under the wild-card exemption of Section 522(d)(5). Schwab accordingly had no reason to object to the list of property Reilly claimed as exempt, and nothing in the Bankruptcy Code or Rules required him to do so to preserve his ability to distribute to creditors amounts in excess of the $10,718 exemption that the statute permitted and that Reilly claimed.

Section 522(*l*) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4003 govern the process through which a debtor claims exemptions and parties in interest, including the Chapter 7 trustee, may object to the claimed exemptions. Section 522(*l*) requires the debtor to "file a list of property that the debtor claims as exempt." Rule 4003(a) makes clear that Schedule C contains that list by requiring the debtor to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Rule 1007(b), in turn, requires the debtor to file schedules of assets and liabilities "prepared as prescribed by the appropriate Official Forms."

Rule 4003 sets out the procedure and deadlines for objections to a debtor's claimed exemptions, providing that "[a] party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later," and that the deadline may be extended for cause on a party's timely motion. Fed. R. Bankr. P. 4003(b). "After hearing on notice, the court shall determine the issues presented by the objections," and "the objecting party has the burden of proving that the exemptions are not properly claimed." *Id.* 4003(c).

Under the statute, if no objection is filed, "the property claimed as exempt" on Schedule C "is exempt." 11 U.S.C. § 522(*l*). Here, all parties agree that no objection was filed. Any property claimed as exempt on Schedule C, therefore, is exempt. The only question, then, is the extent of Reilly's claimed exemption on Schedule C. And the answer to that appears on the face of Reilly's Schedule C itself: Reilly "claimed as exempt" a $10,718 interest in her kitchen equipment. That $10,718 interest became exempt when no one objected. But it does not follow that because no one objected, Reilly was entitled to exempt a greater interest than Section 522(d) permitted, and a greater interest than she had in fact claimed.

Reilly's contrary argument, and the argument adopted by the Third Circuit, runs as follows: because Reilly listed the same amount—$10,718—in both the column headed "Value of Claimed Exemption" and the column headed "Current Market Value of Property," Schwab should have been on notice that she was claiming as exempt the entire value of her kitchen equipment, whatever that value turned out to be. But that is

wrong. It simply does not follow that, because Reilly listed the same value for her equipment and her claimed exemption, she was claiming an exemption in the full value of the equipment (regardless of its actual value), and the court of appeals offered no explanation for that conclusion. To be sure, Reilly's Schedule C did suggest that—if it ultimately turned out that her kitchen equipment was in fact worth only $10,718—all of that value would be exempt. But the form nowhere indicates that Reilly was claiming that the equipment was exempt "in kind"—that she was entitled to exempt the entire asset regardless of what its actual value turned out to be. To the contrary, Reilly clearly and unequivocally stated that the "value of [her] claimed exemption" was $10,718—an amount the statute permitted her to exempt.

Indeed, reading Reilly's schedule as the court of appeals did runs contrary to the common-sense presumption that parties act in accordance with the law. In cases like this, where the claimed exemption is subject to a statutory cap, the debtor is legally entitled to claim only that amount as exempt. When a debtor specifies that she is claiming an exemption within the amount of the statutory cap, the natural conclusion is that the debtor is claiming an exemption only to the extent permitted by law, and not some greater exemption that would be legally impermissible. *Cf., e.g., Walsh* v. *Schlecht*, 429 U.S. 401, 408 (1977) ("Since a general rule of construction presumes the legality and enforceability of contracts, ambiguously worded contracts should not be interpreted to render them illegal and unenforceable where the wording lends itself to a logically acceptable construction that renders them legal and enforceable." (citation omitted)). Moreover, even if Reilly's Schedule C were viewed as being ambiguous on that score—and

it is difficult to see what might be ambiguous about Reilly's claim that she had a $10,718 exemption in her kitchen equipment—such an ambiguity cannot be a basis for granting an "in kind" exemption. "[I]t is most fair to place on the debtor the burden of claiming exemptions unambiguously," both because "in legal documents ambiguity is traditionally construed against the drafter," and because, "after *Taylor*, a failure to object to a claimed exemption has very harsh consequences for the estate." *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008).[9]

By its plain terms, Rule 4003(b) requires a trustee to object only to a debtor's claim of exemption—not her asserted valuation, which by definition cannot be ascertained until a purchase price is negotiated with a willing buyer. *See In re Hyman*, 967 F.2d 1316, 1320 (9th Cir. 1992) (an asset sale can be "a relatively complex financial transaction and the trustee cannot be certain

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[9] *See also In re Hyman*, 967 F.2d 1316, 1320 n.6 (9th Cir. 1992) ("Given that the debtor controls the schedules, we construe any ambiguity therein against him."); *In re Mitchell*, 400 B.R. 503, 509 (Bankr. N.D. W. Va. 2009) (debtor did not put trustee "on notice that she was claiming property as wholly exempt by equating the value of her property and her claim of exemption when the claim of exemption is proper and below the statutory cap [because] it is the Debtor's burden to unambiguously claim an exemption"). Insofar as the debtor's claim of exemption contained on Schedule C may be analogized to a complaint asserting a claim for relief (here, a determination that the debtor's interest in certain property is exempt under 11 U.S.C. § 522), this Court's decision in *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007), suggests that a debtor claiming that an item of property is exempt "in kind" must make that assertion with "enough heft" to make it clear—not merely assert facts that would be "consistent with" an "in kind" exemption. *Id.* at 557.

of what he will reap until he has taken bids on the property"). For that reason, the court of appeals was off the mark in asserting that "[o]nce the period for objection lapses, all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor." Pet. App. 16a. To be sure, Reilly was entitled to know upon the expiration of the deadline that she was entitled to keep her interest—to the extent of $10,718—in her kitchen equipment. But nothing in the statute or the Rule entitled her to know at that time whether her interest would ultimately be returned to her in the form of the equipment itself or in the form of cash, a matter that cannot be resolved, and that the statute and Rule do not require to be resolved, until the trustee seeks to sell the underlying asset.

The court of appeals thus erred in extending the rule beyond the subject to which its text is addressed—the list of property that the debtor claims as exempt—to require the trustee to object to the debtor's valuation of her assets.[10] In short, because Schwab had no

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[10] Because the only question presented in this case is whether Reilly's claim of exemption, as set forth on her Schedule C, is limited to a $10,718 interest in her kitchen equipment, this case can and should be fully resolved simply by examining the exemption Reilly claimed on Schedule C. Reilly's contention that because she "sought to exempt [the] full value" of her equipment (Opp. 15), she is now entitled to an "in kind" exemption, thus invites a wholly irrelevant inquiry into her subjective intent at the time she filed that schedule. Even if such an inquiry were appropriate, however, it would not further Reilly's cause. Specifically, Reilly's Schedule C does not allocate her entire wild-card exemption to her kitchen equipment. Rather, she expressly allocates $2,332 in value to other property. JA 57a-58a. The only logical conclusion, therefore, is that Reilly made a specific determination to claim a monetary exemption in her kitchen equipment that was limited to $10,718. In addition, Reilly's motion to dismiss her bankruptcy case further

objection to the "list of property" Reilly "claimed as exempt," Fed. R. Bankr. P. 4003, neither the statute nor the rules required him to assert any objection to that list within the 30-day period in order to preserve his ability to distribute excess value to creditors.

### B. *Taylor* v. *Freeland & Kronz* Does Not Support The Court Of Appeals' Holding

Nothing in this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), supports a contrary conclusion. *Taylor* is readily distinguishable, standing for the unremarkable proposition that a trustee is required to file a timely objection in circumstances in which the debtor's claimed exemption is *improper*. The court of appeals' belief that *Taylor* dictates the outcome of this case—where the debtor's claimed exemption was *proper*—rests on a significant misunderstanding of the facts and reasoning of *Taylor*.

The debtor in *Taylor* filed a Chapter 7 bankruptcy petition in 1984, while she was pursuing a discrimination suit against her employer, Trans World Airlines. In her Schedule B-4 (the predecessor to Schedule C), the debtor claimed an exemption in the proceeds of her lawsuit and listed the value of the claimed exemption as "unknown." 503 U.S. at 640. At the Section 341 meeting, debtor's counsel in the discrimination suit told the trustee that they estimated the debtor might recover $90,000 in the lawsuit. *Id.* The trustee then wrote to

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confirms Reilly's recognition that her claim of exemption in her kitchen equipment was not an "in kind" exemption—rather, it was subject to a $10,718 monetary cap. JA 137a ("it was determined [at Reilly's Section 341 creditors' meeting] that the debtor is not entitled to a full exemption in her tools of the trade/personal property in reference to her business equipment").

debtor's counsel saying that he believed the proceeds of the suit were non-exempt property of the estate, and asked for more details about the suit. *Id.* In response, debtor's counsel "expressed optimism that they might settle with TWA for $110,000." *Id.* The trustee nonetheless "decided not to object to the claimed exemption," because he "doubted that the lawsuit had any value." *Id.* at 641. He was wrong; the debtor ultimately settled with TWA for $110,000, part of which went to debtor's counsel. *Id.* The trustee then sued the debtor's counsel to recover the money they had received, arguing that it was property of the estate. *Id.*

This Court held that the trustee had waited too long to assert that the proceeds of the lawsuit were estate property, and that he should have objected to the debtor's claimed exemption within the deadline set by Rule 4003. 503 U.S. at 642. Both parties agreed that the Bankruptcy Code did not permit the debtor to claim the exemption. *See id.* The parties did not contest that the debtor's schedules constituted a claim of exemption in all of the proceeds of her lawsuit. *See* Pet. Br. 20, 30-32, *Taylor* v. *Freeland & Kronz*, No. 91-571 (U.S.). In contending that the proceeds of the lawsuit should not be exempt, notwithstanding his failure to assert a timely objection, the trustee argued that "courts may invalidate a claimed exemption after expiration of the 30-day period if the debtor did not have a good-faith or reasonably disputable basis for claiming it." 503 U.S. at 643. This Court rejected that argument, reasoning that "Rule 4003(b) gives the trustee ... 30 days from the initial creditors' meeting to object. ... The Bankruptcy Court did not extend the 30-day period. Section 522(*l*) therefore has made the property exempt." *Id.*

The court of appeals here concluded that "this case [is] controlled by *Taylor*" because it believed *Taylor* presented the same facts:

> Just as we perceive it was important to the *Taylor* Court that the debtor meant to exempt the full amount of the property by listing "unknown" as both the value of the property and the value of the exemption, it is important to us that Reilly valued the business equipment at $10,718 and claimed an exemption in the same amount. Such an identical listing put Schwab on notice that Reilly intended to exempt the property fully.

Pet. App. 11a; *see also* Pet. App. 14a ("[W]e read *Taylor* to mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt."). But this reading of *Taylor*, simply put, is incorrect.

Contrary to the court of appeals' belief, *Taylor* never mentioned—let alone deemed it "important"—that "the debtor ... list[ed] 'unknown' as both the value of the property and the value of the exemption." Pet. App. 11a. Indeed, in 1984, when the debtor in *Taylor* filed for bankruptcy, the schedule on which the debtor listed her exemptions did not contain a column requiring the debtor to list the value of the property. It required the debtor only to list the value of the *exemption*. The column that appears on the 2005 form used by Reilly, asking the debtor to list "the current market value of the property," was added to the form only in 1991. *See* Fed. R. Bankr. P. Form 6 advisory commit-

tee note (1991 enactment) ("[Schedule C] adds a new requirement that the debtor state the market value of the property in addition to the amount claimed as exempt."); *see also* Fed. R. Bankr. P. Form 6, Schedule B-4 (1990) (requiring the debtor to list only the "value claimed exempt"); Joint Appendix 18, *Taylor* v. *Freeland & Kronz*, No. 91-571 (U.S.) (reproducing schedule filed by debtor in *Taylor*).[11]

More fundamentally, there was no dispute in *Taylor* that the debtor's schedules clearly indicated that she was claiming as exempt the entire proceeds of her lawsuit, and no dispute that the exemption was objectionable on its face. The only dispute was over whether the trustee was required to object to that claimed exemption within the 30-day period set out by Rule 4003, or whether there was an exception to the 30-day deadline for cases in which the debtor lacked a colorable basis for claiming the exemption. *See* 503 U.S. at 642-643; *see also, e.g., Barroso-Herrans*, 524 F.3d at 344 ("*Taylor* does not tell us *what* has been claimed as exempt—only that *whatever* has been claimed as exempt is beyond the estate's grasp once the deadline has elapsed").

Accordingly, the basic premise of the court of appeals' decision—that *Taylor* involved facts similar to those here and thus controls the outcome of this case—is wrong. *Taylor* has no bearing on this case. It has

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[11] At the time of *Taylor*, the debtor was required to list the value of the property itself on the schedule that was the predecessor to the current Schedule B—then Schedule B-2—on which the debtor was required to estimate the value of all of her assets. *See* Fed. R. Bankr. P. Form 6, Schedule B-2 (1990). That schedule, however, was not part of the "list of property claimed as exempt" within the meaning of Rule 4003(a).

nothing to say regarding the import of the debtor's providing, in her list of exemptions, the same amount for the value of a claimed exemption and the value of the property—because that did not occur in *Taylor*. Indeed, the debtor in *Taylor* provided no value at all for the claimed exemption, listing it as "unknown"—an exemption that was objectionable on its face. And *Taylor* does not—nor could it—address the question whether a trustee's failure to object to the list of property the debtor claimed as exempt precludes the trustee from liquidating and distributing to creditors property exceeding the amount the debtor specifically claimed as exempt.

The only reasonable, common-sense answer to that question—and the only answer that comports with the language of the statute and the Rule—is no. Because the statute and the Rule require the trustee only to object to "the list of property claimed as exempt," Fed. R. Bankr. P. 4003(b), and because failure to object results only in "the property claimed as exempt on such list" becoming exempt, 11 U.S.C. § 522(*l*), a party in interest is not required—under either the statute, the Rule, or this Court's decision in *Taylor*—to object when "the property claimed as exempt" is properly exempted under the statute. And the consequence of a failure to object is that the debtor receives an exemption *only* in the amount of the interest she specifically claimed as exempt, not some greater interest that the debtor's schedule did not claim and that there would be no basis to claim.

## II. THE RULE ADOPTED BY THE COURT OF APPEALS WOULD BE UNWORKABLE IN PRACTICE AND WOULD ENCOURAGE GAMESMANSHIP BY DEBTORS

In addition to resting on an untenable interpretation of the statutory scheme and this Court's decision in *Taylor*, the rule adopted by the court of appeals would impose an unnecessary and unworkable burden on already overloaded bankruptcy trustees.

The principal work of a Chapter 7 trustee is determining whether there is sufficient value in the debtor's property to justify liquidation. The trustee begins that process with only the debtor's description of the property and estimate of the property's value as provided in the debtor's schedules. Unless and until the trustee is able to inspect the debtor's property himself or arrange for an appraisal, or until he receives further information from a creditor or another third party, he has no way to know whether the debtor's estimate is reliable. And, even where the trustee does acquire some additional indication of the property's value beyond the debtor's bare assertion on her schedules, the true "value" of the property—and the only value that matters for liquidation purposes—cannot be determined until the property is sold. Unlike the determination of whether there is a proper legal basis for a claimed exemption, which can typically be ascertained simply by comparing the debtor's Schedule C to the text of the Bankruptcy Code, the sale of property is often "a relatively complex financial transaction and the trustee cannot be certain of what he will reap until he has taken bids on the property." *Hyman*, 967 F.2d at 1320. For valuation purposes, "the relevant figure is the actual sale price of the property, not the value of the property listed by the debtor on his schedule of assets." *Id.* at 1320 n.9.

The court of appeals' rule, however, requires the trustee to value property in which the debtor claims an exempt interest at the very beginning of the bankruptcy process. Because Rule 4003(b) requires objections to the debtor's claimed exemptions within 30 days of the Section 341 creditors' meeting, and Rule 2003(a) requires the Section 341 meeting to be held between 20 and 40 days after the debtor files her petition, the trustee has only 50 to 70 days to value such property. Cases in which there are assets to administer, however, can take "one to four years" to complete. U.S. Dep't of Justice, U.S. Trustee Program, *Preliminary Report on Chapter 7 Asset Cases 1994 to 2000*, at 7 (June 2001). Accordingly, in the cases where valuation matters most, the court of appeals' rule would force the trustee to make valuation decisions that have permanent consequences in the nascent stages of the bankruptcy, when full information about the property's value is often lacking.

Aside from the difficulties that attend valuation decisions under ideal conditions, Chapter 7 trustees do not practice under ideal conditions. There are approximately 1,140 Chapter 7 trustees nationwide.[12] In the 12-month period ending March 31, 2009, there were

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[12] *See* U.S. Dep't of Justice, Office of the Inspector General, *The United States Trustee Program's Oversight of Chapter 7 Panel Trustees and Debtors*, at i (Mar. 2008) ("As of June 2007, there were 1,140 Chapter 7 panel trustees operating nationwide, who processed a total of 484,162 Chapter 7 filings. Annually, Chapter 7 panel trustees are responsible for collecting over $2.7 billion in funds through the liquidation of debtors' estates, and distributing those funds to creditors, in accordance with the Bankruptcy Code."), *available at* http://www.usdoj.gov/oig/reports/OBD/a0819/final.pdf.

819,362 Chapter 7 filings—an average of approximately 719 cases per trustee.[13] That heavy case load makes it impracticable for trustees to value every item of property in which a debtor claims an exempt interest on the expedited schedule required by the court of appeals. Nor do trustees usually have the financial resources to outsource the investigatory work. In the vast majority of cases—no-asset cases—the trustee's compensation is limited to $60. *See* 11 U.S.C. § 330(b). Trustees simply do not have the time or resources to make complex factual judgments about value within the narrow time frame that the court of appeals' rule would demand.

Although, as *Taylor* recognized, Rule 4003 allows a trustee to request an extension of time to object or a hearing on a debtor's valuation of property, *see* 503 U.S. at 644; Fed. R. Bankr. P. 4003, widespread resort to those remedies would simply exacerbate the inefficiencies created by the court of appeals' rule by unnecessarily requiring bankruptcy courts routinely to address valuation questions in the early stages of the case, when they might never need to be addressed at all. As one bankruptcy court explained, a requirement that trustees object to the debtor's valuation of property in which an exempt interest is claimed

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[13] *See* Admin. Office of the U.S. Courts, *Business and Nonbusiness Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code, During the Twelve Month Period Ending Mar. 31, 2009*, *available at* http://www.uscourts.gov/Press_Releases/2009/bankrupt_f2table_mar2009.pdf; *see also* Admin. Office of the U.S. Courts, *Judicial Business of the United States Courts* 26 (2008) ("Chapter 7 filings rose 40 percent to 679,982 in 2008, climbing in 90 of the 94 districts."), *available at* http://www.uscourts.gov/judbus2008/JudcialBusinespdfversion.pdf.

> may result in thousands of otherwise unnecessary objections to exemptions. Some trustees may feel compelled to object to exemptions when it is then impossible to determine the actual *value* of property. Alternatively, it may be necessary to file a multitude of motions to request additional time to file objections to scheduled value. Each motion will require some justification with stated reasons. Each motion will require notice and opportunity to be heard or an actual hearing. Each motion will require an attendant order which grants or denies the requested relief.

*In re Cormier*, 382 B.R. 377, 398 n.31 (Bankr. W.D. Mich. 2008). Rather than reading the statute and the Rule to require trustees to file omnibus extension or valuation motions, and courts to decide such matters, in every situation like this one, it is more sensible to read them to mean what they say—that a trustee must object only when he takes issue with the "list of property claimed as exempt," not when he agrees that the claimed exemption is proper but is unsure whether the debtor's valuation of the property is correct. *Cf.* Fed. R. Bankr. P. 1001 (bankruptcy rules "shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"); *In re Wick*, 276 F.3d 412, 417 (8th Cir. 2002) ("We do not think that the Bankruptcy Code and Rules oblige a trustee to object every time a debtor partially exempts an asset in order to preserve the estate's interest. [If such objections were required], objections would multiply greatly [and] the judge would have nothing to determine after the objections, except that the debtor is exempting the asset to the extent the Code allows—a result that is clear from the face of the exemption schedule and § 522.").

In addition to burdening trustees and courts unnecessarily, the court of appeals' rule would give debtors a perverse incentive to game the system by undervaluing their assets, and grant dishonest (or mistaken) debtors a windfall that more honest or diligent debtors would not receive. In this case, for example, if Reilly had correctly listed the value of the kitchen equipment as approximately $17,000, she would have had no basis to object to the trustee's selling the equipment and distributing the value above $10,718 to her creditors. Yet, under the court of appeals' rule, because Reilly incorrectly undervalued her kitchen equipment, she is entitled to exempt the equipment "in kind." And, under that rule, any debtor would be able to obtain the same benefit simply by listing the same value for a claimed exemption and the property in which she claims an exempt interest.

To be sure, as this Court recognized in *Taylor*, the Bankruptcy Code provides "penalties under various provisions for engaging in improper conduct in bankruptcy proceedings." 503 U.S. at 644. But the court of appeals' rule would nonetheless "provide an incentive for savvy (or less than candid) debtors to purposely underestimate the fair market value of the property in the hope that a trustee would fail to object and then be prevented from subsequently administering the property on behalf of the estate." *In re Einkorn*, 330 B.R. 570, 572 (Bankr. E.D. Mich. 2005) (citation and internal quotation marks omitted). The Bankruptcy Code and Rules should not be interpreted to produce such inequitable and anomalous results.

## CONCLUSION

For the foregoing reasons, the judgment of the Third Circuit should be reversed.

Respectfully submitted.

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
LESLIE S. GARTHWAITE
NATHAN A. BRUGGEMAN
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave. N.W.
Washington, D.C. 20006
(202) 663-6000

JULY 2009

# APPENDIX

## STATUTORY APPENDIX

### 11 U.S.C. § 522 (2005)—Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

(2) a debt secured by a lien that is

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title;

(B) a tax lien, notice of which is properly filed; or

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory

agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $18,450[1] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,950[1] in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $475[1] in value in any particular item or $9,850[1] in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,225[1] in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $975[1] plus up to $9,250[1] of

any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,850[1] in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $9,850[1] less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $18,450,[1] on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt—

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, di-

vorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.[2]; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such

implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(*l*) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on be-

half of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

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[1] Dollar amount as adjusted by the Judicial Conference of the United States. *See* Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

[2] So in original. Period probably should not appear.

**Federal Rule of Bankruptcy Procedure 4003 (2005)—Exemptions**

(a) Claim of exemptions—A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions—A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof—In any hearing under this rule, the objecting party has the burden of proving that the

exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property—A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

# RESPONDENT'S BRIEF

Supreme Court, U.S.
FILED
OFFICE OF THE CLERK

No. 08-538

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB,

*Petitioner*,

v.

NADEJDA REILLY,

*Respondent*.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## BRIEF FOR RESPONDENT

Gino L. Andreuzzi
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
Alexander R. Bilus
Michael J. Newman
Joshua Richards
Justin C. Danilewitz
Kate O'Keeffe
Francesco P. Trapani
DECHERT LLP
90 State House Square
Hartford, Connecticut 06103
(860) 524-3999

*Counsel for Respondent*

3074 5.1936

## QUESTION PRESENTED

Where a debtor in bankruptcy exempts her "tools of the trade" in full, and the trustee fails to object to the debtor's claim of exemption, may the trustee nonetheless deny the debtor the benefit of her exempt property by selling it?

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## PRELIMINARY STATEMENT

This matter arises out of the chapter 7 bankruptcy case of respondent Nadejda Reilly ("Reilly"). Petitioner is William G. Schwab, the trustee in Reilly's bankruptcy case ("Trustee").

At the time Reilly commenced her bankruptcy proceeding, she filed with the bankruptcy court a schedule of "exempt" property that she intended to retain as part of her "fresh start" in bankruptcy free from the claims of creditors. *See* 11 U.S.C. § 522(*l*) (providing that a debtor "shall file a list of property that the debtor claims as exempt"). Reilly included among her exempt assets various "tools of the trade" that she uses to earn a living, namely cooking equipment that she uses to prepare the food items that she sells. Reilly stated the value of her equipment at $10,718, and claimed the entire value as exempt, thus unequivocally indicating her desire to exempt the entirety of this property.

Section 522(*l*) of the Bankruptcy Code provides that, "[u]nless a party in interest objects, the property claimed on [the debtor's schedule] is exempt." In addition, Rule 4003(b) of the Federal Rules of Bankruptcy Procedure provides that a trustee has thirty days after the conclusion of the meeting of creditors to file an objection, unless the trustee seeks an extension before the expiration of the 30-day period. In this case, the Trustee did not seek an extension, nor did he

timely file an objection to Reilly's claim of exemption. The issue before the Court is whether the Trustee may nonetheless deprive Reilly of her exempt property–the tools that she uses to earn her livelihood–by selling them out from under her at some subsequent date with the hope (but no guarantee) that they might fetch more than the $10,718 value Reilly stated on her schedule.

In *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), this Court considered a virtually identical issue. In that case, the debtor (Davis) indicated her intent to exempt the proceeds of a civil rights lawsuit by listing the lawsuit in her schedule of exempt property and stating the exempt value of the suit as "unknown." The trustee failed to object timely to her exemption. Subsequently, after further litigation, it turned out that the lawsuit had a value ($110,000) that vastly exceeded the amount the debtor could have claimed legitimately as exempt, and the trustee sought to recover most of the proceeds. *See id.* at 642 ("[t]he parties agree that Davis did not have a right to exempt more than a small portion of these proceeds"). The Court concluded that, under section 522(*l*) and Rule 4003(b), the trustee's failure to object to the debtor's listing barred him from seeking to deprive her of the exemption regardless of the value the lawsuit turned out to have. The Court reasoned that whatever right the trustee may have had to

reach the proceeds expired after he failed to timely interpose an objection.

This case presents an even more compelling candidate for the same result. First, Reilly's listing of her exempt property even more plainly triggered the Trustee's obligation to interpose a timely objection than the debtor's listing in *Taylor*. In *Taylor*, the debtor claimed her exemption by listing her lawsuit on her schedule and stating its exempt value as "unknown"–a relatively ambiguous statement, yet sufficient to compel the conclusion that the debtor intended to exempt the entire lawsuit, thus triggering the trustee's obligation to object if he wished to deprive the debtor of any part of the exempt property. In this case, Reilly itemized her cooking equipment, valued it at $10,718, and then claimed *the full $10,718 as exempt*. Because Reilly stated a precise value for the equipment, and then stated that she claimed the full value as exempt, there can be no doubt that she intended to exempt the property in its entirety–particularly since Reilly did not use up all of her available exemption allocations on the equipment, and applied some to other assets (*e.g.*, perishable foods). Under the circumstances, the Trustee cannot claim credibly that Reilly's straightforward indication of her intention was somehow *less* sufficient than the debtor's statement in *Taylor* to trigger the Trustee's obligation to object if he wished to deprive Reilly of any portion of her exempt assets. If

anything, Reilly's listing was more clearly sufficient, and the Trustee's failure to object is fatal to his position.

Second, the Trustee's explanation for failing to object in this case is far less plausible than the trustee's explanation in *Taylor*. In *Taylor*, the trustee explained that he did not object to the debtor's exemption because he doubted the debtor's lawsuit had any significant value–a plausible explanation given the trustee's stated experience, yet insufficient to excuse his failure to object. In this case, the Trustee harbored no similar, plausible doubt. Well before the relevant objection deadline, the Trustee contends that he obtained an appraisal of Reilly's cooking equipment suggesting that the equipment might be worth more than $10,718. The Trustee's failure to object thus lacks even the patina of plausibility present in *Taylor*. Just as the trustee in *Taylor* was barred from recovering the value of the exemption in excess of any amount the debtor could legitimately have claimed, the Trustee in this case is likewise barred, and certainly is not entitled to sell Reilly's equipment with simply the hope of recovering more than the value Reilly stated in her schedule.

This conclusion follows not only from the premises of *Taylor*, but also from the command of section 522(*l*) and Rule 4003(b), and likewise their logic, history, and policy. Further, the con-

sequences of the Trustee's preferred outcome are dire. Among other things, under the Trustee's approach, every debtor would hereafter hold title to his or her exempt property clouded by the trustee's right to sell the property at some point in the future without any obligation to interpose a timely objection. This is contrary to the whole point of the exemption procedure, which is to settle the status of the debtor's exempt property expeditiously in order to facilitate the debtor's "fresh start." The decision of the court of appeals should be affirmed.

## STATEMENT

### A. Background

Reilly earns her living as a cook, operating a small, one-person catering business. Well before she commenced her bankruptcy case, Reilly was able to start her business because her parents, in spite of their own financial burdens, bought her the equipment she uses to earn a living. Joint Appendix ("JA") 138a, 153a. Because of her parents' sacrifice, Reilly attaches "extraordinary sentimental value" to the equipment. JA 152a-153a.

Beset with financial difficulty, Reilly commenced her chapter 7 bankruptcy case on April 21, 2005. JA 9a, 26a. By operation of law, when Reilly commenced her case, a bankruptcy estate was created consisting of all of her property. 11

U.S.C. § 541. In addition, immediately following the commencement of her case, the office of the United States Trustee–a division of the Department of Justice with oversight authority in bankruptcy cases–appointed the Trustee to preside over her bankruptcy proceeding, take possession of her estate, and generally liquidate the assets in her estate for the benefit of creditors. *Id.* § 701(a)(1) (providing for the appointment of a trustee in every chapter 7 case); § 704(a)(1) (providing that the duties of a chapter 7 trustee include "collect[ing] and reduc[ing] to money the property of the estate"); § 726 (providing distribution procedures in a chapter 7 proceeding).

Because Reilly is an individual, she was entitled to claim certain property as "exempt" from her bankruptcy estate, and therefore free from the Trustee's (and creditors') reach. *Id.* § 522; *see Rousey v. Jocaway*, 544 U.S. 320, 325 (2005) ("To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values."); *Owen v. Owen*, 500 U.S. 305, 308 (1991) ("An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor...Property that is properly exempted under § 522 is (with some exceptions) immunized against liability for prebankruptcy debts."); *see also generally Lockwood v. Exchange Bank*, 190 U.S. 294 (1903) (property set apart as exempt

forms no part of the estate in bankruptcy). Pursuant to section 522(b), Reilly elected to take the exemptions permitted under federal law, rather than those of the state where she resides. *See* JA 56a; 11 U.S.C. § 522(b)(2).

In order to exempt particular items of property from her estate, section 522(*l*) required Reilly to "file a list of property that [she] claims as exempt." *Id.* § 522(*l*). Rule 4003(a) further instructed Reilly to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a); *see also* 11 U.S.C. § 522(*l*). In relevant part, Rule 1007 directs the filing of various schedules of assets through the use of the appropriate official forms–in this case Official Form 6. Fed. R. Bankr. P. 1007(b)(1)(a), Form 6. Form 6 includes a Schedule B that the debtor must use to list all personal property, and a Schedule C to list all property claimed as exempt. *See id.*; Fed. R. Bankr. P. Form 6, Schedules B, C (2005).

Reilly complied with these requirements. On her Schedule B, she included among her personal property an itemized list of her cooking equipment, which she valued at $10,718 as the form directs. JA 49a. On her Schedule C, she listed the same cooking equipment as exempt as the form directs, and estimated that the equipment had a current market value of $10,718 as

the form directs. JA 58a. She also claimed the full value of these items as exempt, and identified sections 522(d)(5) and 522(d)(6) of the Code as the statutory bases for her exemptions, all as the form directs. *Id.*

In relevant part, section 522(d)(6) permits a debtor to exempt "tools of the trade" up to a certain value ($1,850 at the time Reilly commenced her bankruptcy case; $2,025 currently). 11 U.S.C. § 522(d)(6). In addition, section 522(d)(5)–the so-called "wild card" provision–permits a debtor to exempt *any* property subject to two separate value limits: a specific amount stated in the section ($975 at the time Reilly commenced her bankruptcy case; $1,075 currently), *plus* the unused portion of the homestead and burial plot exemption permitted in section 522(d)(1) up to a stated amount ($9,250 at the time of Reilly's bankruptcy filing; $10,125 currently).

In this case, between sections 522(d)(6) and 522(d)(5), Reilly had available to her a total of $11,195 in exemptions, which she applied on her schedules to cooking equipment she valued at $10,718. JA 57a-58a. In other words, in claiming her cooking equipment as exempt, Reilly did not exhaust the entire amount of her available exemptions under these two provisions. Instead, she placed what she believed were realistic values on the cooking equipment she

claimed as exempt and took her exemptions accordingly, listing as exempt the full value of her equipment. *See also* Resp. App. 9a (counsel stating that Reilly "claimed all of the property").[1]

After a debtor commences a chapter 7 case, the United States Trustee is required to call a meeting of the debtor's creditors "[w]ithin a reasonable time after the order for relief." 11 U.S.C.

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[1] Likewise, Reilly did not use the full amount of her available exemptions for household items under section 522(d)(3) ($475 per item, with an aggregate total of $9,850 for all household items, at the time of Reillly's bankruptcy filing; $525 and $10,775 currently). *See* JA 57a-58a (using $2,000 of the $9,850 allowed under section 522(d)(3)). Reilly did use the maximum exemption of $2,950 for her automobile ($3,225 currently). *Id.* at 58a. The automobile is subject to a security interest in favor of a lender securing a debt of $11,000, leaving no value in the car for Reilly's bankruptcy estate after taking into account the interest of the secured lender and Reilly's exemption. *See* JA 60a. Reilly also more than exhausted the remainder of her "wild card" exemption on perishable food items. *See* JA 58a. Because these items are perishable and generally of no value to a trustee or creditors, but should nonetheless be disclosed, Reilly's only realistic choice in dealing with these items was to list them as exempt. Because of the nature of this kind of property as perishable and valueless to trustees and creditors, trustees rarely object to exemptions of this type. *See* Pet. Br. 15 n. 8; Gov. Am. Br. 28 n.7.

§ 341.[2] Rule 2003 clarifies that a "reasonable time" means "no fewer than 20 and no more than 40 days after the order for relief." Fed. R. Bankr. P. 2003(a). At the meeting of creditors, the chapter 7 trustee presides and questions the debtor regarding the debtor's schedules and assets. *See* Fed R. Bankr. P. 2002(a)(1), 2003(b)(1).

In this case, the Trustee conducted the meeting of creditors on June 22, 2005. Resp. App. 2a. Prior to the meeting, the Trustee arranged for some form of appraisal of the cooking equipment. At the meeting, the Trustee stated to Reilly that he believed that the appraised value of the equipment was approximately $7,200 more than the $10,718 value listed on Reilly's schedules. Resp. App. 2a. Despite Reilly's request for written documentation of the appraisal, however, the Trustee has not submitted any documentation to Reilly or the bankruptcy court. Resp. App. 2a. The appraisal information thus remains unsubstantiated, in contrast to Reilly's sworn statement valuing her cooking equipment at $10,718.

At the meeting, the Trustee also stated that "he desired to have an auction [of the equipment] to generate funds for unsecured

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[2] In a voluntary chapter 7 case, the order for relief enters automatically upon the filing of the debtor's petition. 11 U.S.C. § 301(b).

creditors in the case." Resp. App. 2a-3a, 5a-6a. Notably, if the cooking equipment were demonstrated to be worth more than the $10,718 value Reilly placed on these items in her schedules, Reilly would still have been able to exempt a somewhat higher amount than the $10,718 she claimed the equipment was worth because she would be entitled to amend her exemptions to reallocate some of her exemptions to apply them to the equipment.[3] In addition, because the equipment consists of multiple items, Reilly might elect to exempt some items and not others.

When Reilly learned that the Trustee wished to auction her cooking equipment, she insisted that she could not "stand the thought or go through this, I want to get out of bankruptcy, I'll find a way to pay the creditors, and I will pay them back the money." JA 153a. Accordingly, on June 29, 2005, Reilly filed a motion to dismiss her case, stating that "[t]he business equipment

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[3] A debtor may amend his or her schedules to claim a greater portion of available exemptions. *See* Fed. R. Bankr. P. 1009(a) (providing that a voluntary schedule "may be amended by the debtor as a matter of course at any time before the case is closed."); *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998) (debtors permitted to amend schedules to add homestead exemption); *In re Henry*, 183 B.R. 748, 750 (Bankr. N.D. Tex. 1995) (when testimony indicated tools of trade might have a higher value than debtors claimed, debtors were permitted to amend schedules to claim higher value as exempt).

and inventory of the debtor is necessary to her livelihood and art, and was a gift to her from her parents. The debtor does not desire to continue with the bankruptcy since she wishes to continue in restaurant and catering as her occupation." JA 138a. As discussed more fully below, the bankruptcy court denied Reilly's motion to dismiss in conjunction with its determination that the Trustee could not sell her cooking equipment.

Pursuant to Rule 4003(b), the Trustee had thirty days after the conclusion of the meeting of creditors to object to Reilly's claim of exemptions, or seek an extension of time to do so. Fed. R. Bankr. P. 4003(b).[4] The Trustee did neither. *See* JA 168a (counsel for the Trustee conceding that there had been no objection); Pet. Br. 22 (same). Instead, on August 10, 2005, he filed an application to employ an auctioneer and, further, a motion to sell Reilly's cooking equipment through a public sale. JA 141a-142a. Reilly ob-

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[4] Both Rule 4003(b) and section 522(*l*) permit a "party in interest" to file an objection to a claim of exemption. The phrase "party in interest" includes a chapter 7 trustee. *See* Fed. R. Bankr. P. 4003(b); *Edmonston v. Murphy (In re Edmonston)*, 107 F.3d 74, 77 (1st Cir. 1997) (holding that a trustee is a party in interest entitled to oppose a claim of exemption); *Taylor v. Freeland & Kronz*, 938 F.2d 420, 421 (3d Cir. 1991) (noting that a trustee or other party in interest may file an objection to a claim of exemption), *aff'd*, 503 U.S. 638 (1992).

jected to the motion, arguing that the property was exempt, that no timely objection to the exemption had been filed, and, therefore, that the property was outside the scope of the Trustee's authority to sell. JA 146a.

## B. Dispositions in the Courts Below

On October 20, 2005, the bankruptcy court held a hearing on Reilly's motion to dismiss her case, together with the Trustee's motion to sell her cooking equipment. Resp. App. 4a. At the hearing, counsel for the Trustee stated that Reilly's cooking equipment had been purchased several years prior to her bankruptcy filing for approximately $20,000. *Id.* at 5a. He likewise stated that, if permitted to be sold, "the auctioneer would not be able to guarantee a $20,000 sale price of the property," and that his "expectations are actually in the neighborhood of around...$17,200." *Id.* at 5a-6a. In response, counsel for Reilly argued that a sale was not permissible because Reilly had claimed the entire property as exempt, and the Trustee had failed to object. *Id.* at 8a-9a. After the hearing, the bankruptcy court denied Reilly's motion to dismiss her case, and also denied the Trustee's motion to sell her cooking equipment, reasoning that the cooking equipment was fully exempt due to the Trustee's failure to interpose a timely objection. Pet. App. 27a-28a; JA 162a, 169a.

On appeal, the district court affirmed. Pet App. 25a-26a. The district court concluded that the case was properly governed by this Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). The court rejected the Trustee's assertion that *Taylor* was distinguishable on the theory that he did not challenge whether the property was exempt, but simply the valuation of the property. Pet. App. 23a. Noting that valuation was an issue addressed in *Taylor*, Pet. App. 23a, the district court observed that Reilly properly exempted the entirety of her cooking equipment by listing the equipment, stating its value, and then claiming the full amount as exempt, thus "totally exempting the property." Pet. App. 25a. In particular, the court found that "[n]o question exists regarding whether the plaintiff sought to exempt the full value of the property." Pet. App. 25a. The court concluded that, because Reilly exempted the entire value, and the Trustee failed to object, Reilly "is entitled to the entire value, even if the trustee asserts it is worth more than she estimated." Pet. App. 25a.

On further appeal, the Third Circuit likewise affirmed, holding that "[w]here, as here, the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemption of its full value and the trustee does not object in a timely manner,...the debtor is entitled to the property in its entirety." Pet. App. 1a-2a. Citing *Taylor* as the "starting point" for its

analysis, Pet. App. 7a, the court rejected the Trustee's contention that Rule 4003 governs only inquiries into the validity of an exemption and "does not preclude judicial inquiry into valuation," reasoning that, in *Taylor*, this Court had been "unpersuaded" by the same argument. Pet. App. 9a. Addressing the trustee's assertion that he should be free to challenge the amount of a claimed exemption without interposing a timely objection as a necessary way to counter improper exemption claims, the court below reasoned that this argument had also been rejected in *Taylor*, observing that "trustees are already safeguarded from such risks by various provisions of the Bankruptcy Code that penalize debtors for engaging in improper conduct in the course of a bankruptcy." Pet. App. 10a.

The court of appeals stated that Reilly's valuation of the cooking equipment at $10,718 and her claim of an exemption in the same amount "put Schwab on notice that Reilly intended to exempt the property fully." Pet. App. 11a. The court continued that, "once Rule 4003's 30-day period elapsed without Schwab filing an objection or a request for an extension, the property became fully exempt from the bankruptcy estate regardless of its ultimate market value." Pet. App. 12a. In reaching its conclusion, the court below distinguished the Ninth Circuit's analysis in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992), noting that the debt-

ors in *Hyman* did not signal their intent to exempt the entire property in question, whereas Reilly and the debtor in *Taylor* did. Pet. App. 12a. The court below further disagreed with the Eighth Circuit's analysis in *Stoebner v. Wick (In re Wick),* 276 F.3d 412 (8th Cir. 2002), criticizing it as inconsistent with *Taylor.* Pet. App. 13a-14a.

Finally, the Third Circuit noted that its conclusion was fully consistent with the policy of the "fresh start" underlying the bankruptcy process, as well as concepts of finality: "Once the period for objection lapses, all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor." Pet. App. 16a. In sum, the Third Circuit held that "where the debtor lists a value for the property and claims an exemption in the same amount, the trustee is on notice of the debtor's valuation and has ample time to seek confirmation that the debtor's claimed value represents the true worth of the asset." Pet. App. 17a.

## SUMMARY OF ARGUMENT

Reilly complied fully with the applicable forms and their requirements when she listed her cooking equipment on her schedule B (personal property schedule) and stated its value at $10,718. JA 49a. She likewise complied fully with the applicable forms and their require-

ments when she again listed her cooking equipment on her schedule C (exempt assets schedule), stated the value of the equipment at $10,718, stated the value of her claimed exemption at $10,718, and also specified the law providing the sources for her exemption. There was nothing more that the forms required her to say, and nothing ambiguous about what she said. By listing the value of her equipment at $10,718, and then claiming this entire value as exempt (as the form directs), Reilly likewise unambiguously indicated her intent to claim the equipment as exempt in its entirety. Under the circumstances, if the Trustee wished to challenge her full exemption of the equipment itself, the Trustee was obligated to file an objection. Because he failed to do so, section 522(*l*) provides that "the property claimed as exempt...is exempt." 11 U.S.C. § 522(*l*).

The plain meaning of section 522(*l*) properly controls the construction of this statutory provision. Likewise, to the extent of any doubt, the Court should interpret the provision narrowly to permit Reilly's full exemption through application of the canon that statutory restrictions in derogation of the "fresh start" policy of the Bankruptcy Code must be tightly construed.

There is no merit to the contention that something less than the cooking equipment itself is somehow fully exempt. As this court ex-

plained in *Taylor*, where a debtor complies with the forms and lists the value of an asset as "unknown," and the trustee fails to object, the asset is not exempt in some limited or restricted amount. The asset is exempt in full and properly belongs to the debtor. So, too, in this case, where Reilly listed her equipment, stated its value, and then claimed the full value as exempt, the asset is exempt in full where the Trustee failed to interpose an objection.

*Taylor* is indistinguishable from this case. There, as here, the trustee challenged the debtor's valuation of the debtor's asset, claiming that it was insufficient to exempt the asset in full because it was inaccurate. Likewise, there is no merit to the Trustee's assertion in this case that the exemption in *Taylor* was objectionable on its face, whereas Reilly's is not. For purposes of section 522(*l*), an objection was required in both instances to prevent the property from becoming fully exempt.

Construed in the larger context of the Code, section 522(*l*) and Rule 4003(b) unequivocally provide that Reilly is entitled to her exempt cooking equipment in its entirety. Section 522(*l*) provides that "[u]nless a party in interest objects, the property claimed as exempt on [Reilly's schedule] is exempt," and it bears no qualifying or limiting gloss. Likewise, Rule 4003(b) provides that a party in interest is required to object

to a claim of exemption within thirty days of the meeting of creditors. Where, as here, the Trustee failed to make any objection, nothing stands in the way of the plain operation of these provisions.

The Trustee contends that the Code draws a distinction between so called "in-kind" exemptions and those that are "unlimited" in the sense that they have no monetary cap. This distinction is artificial as the Trustee attempts to use it in this context. While relevant to establishing whether a trustee has grounds for objection (*e.g.*, because a debtor claims an exemption in excess of the monetary limit), the distinction is irrelevant for purposes of applying section 522(*l*), because section 522(*l*) is not limited in its application to restricting a claim of exemption to its capped amount. For example, in *Taylor*, the Court did not restrict application of section 522(*l*) to allowing the debtor to keep her exempt asset subject to any otherwise applicable monetary cap. On the contrary, the Court directed that, in the absence of an objection, the debtor was entitled to keep the entire unrestricted amount. Limiting a claim of exemption to a particular monetary cap is the reward afforded a properly interposed objection. It is not bestowed upon a forfeited objection of the kind at issue here.

The history of the treatment of exemptions in bankruptcy reinforces the principle that the consideration and allowance of exemptions is intended to be expeditious. A trustee may not sleep on his or her rights, and thereafter claim that an exemption was improperly taken. Objections must be asserted promptly for any kind of challenge to an exemption, including challenges based on allegedly improper valuations of the asset claimed as exempt.

The Trustee's argument is contrary to the policy of finality underlying section 522(*l*) and Rule 4003(b). Finality serves vitally important purposes under the Bankruptcy Code, and where the Trustee failed to interpose any objection, Reilly is entitled to the benefit of her exemption.

There is nothing unsound or unworkable about the decision of the court of appeals in this case. In contrast, the consequences of the Trustee's position, if adopted, are dire. Relieving trustees from their obligation to object to claims of exemption if the objection is based on the valuation of the claim would place a cloud over the title of a multitude of debtors claiming property as exempt. There is no warrant for this uncertainty, particularly where, as here, Rule 4003(b) so clearly specifies an unambiguous deadline for objections.

Finally, the Trustee's position is unfair. There is no legitimate reason to deprive Reilly of the full benefit of her exemption in this case. Accordingly, the decision of the court of appeals should be affirmed.

## ARGUMENT

### I. Reilly's Equipment Is Exempt under the Plain Meaning of Section 522(*l*) and Rule 4003(b).

In construing and applying the Bankruptcy Code, analysis begins with the statutory text. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) ("The starting point...is the existing statutory text."). Further, "when the statute's language is plain, the sole function of the courts–at least where the disposition required by the text is not absurd–is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quotations omitted); *see also Rake v. Wade*, 508 U.S. 464, 471 (1993); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

In addition, exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a "fresh start." *Rousey*, 544 U.S. at 325 ("To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain

values."); Pet. Br. 7 (citing *Rousey*); *see also Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"); *Perez v. Campbell*, 402 U.S. 637, 649 (1971); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). Because of the paramount significance of the "fresh start" policy, limitations that impair its effectiveness are tightly construed. *See Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) (noting "'well-known' guide" that "exceptions to discharge 'should be confined to those plainly expressed'") (quoting *Gleason v. Thaw*, 236 U.S. 558, 562 (1915)); *United States v. Sotelo*, 436 U.S. 268, 286 (1978) (Rehnquist, J., dissenting) (citing general rule "to construe narrowly any exceptions to the general discharge provisions"); *cf Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 667 (2006) (because they run counter to the fundamental bankruptcy policy of equality of distribution among creditors, "provisions allowing preferences must be tightly construed").

As is relevant here, section 522(*l*) unambiguously provides that "[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section...Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Likewise, Rule 4003(b) establishes an

unambiguous deadline for the filing of objections under the section: "[a] party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b).

In this case, the Trustee unmistakably challenges Reilly's claim of exemption. Specifically, he contends that the value Reilly placed on her cooking equipment may be too low, and he wishes to sell the equipment to see if his theory is correct. Of course, if the equipment itself is exempt, he has no right to sell it. *See Owen*, 500 U.S. at 308 ("Property that is properly exempted under § 522 is (with some exceptions) immunized against liability for prebankruptcy debts."). And as section 522(*l*) plainly states, unless a timely objection to a claim of exemption is interposed, "property" claimed as exempt "is exempt." 11 U.S.C. § 522(*l*). In this case, because the Trustee failed to object to Reilly's claim of exemption, the equipment is now beyond his reach.

By its plain terms, section 522(*l*) states a single restriction on the statutory command that property claimed as exempt is automatically exempt: a party in interest, including a trustee, must file an "objection." The ordinary meaning of the term "objection" is "a reason or argument

presented in opposition." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, 814 (1984). The Trustee clearly "opposes" Reilly's claim of exemption. Specifically, he opposes Reilly's valuation of her equipment and, more generally, her indication on her schedule C that the entire value of the equipment is exempt. He "argues" that she is not entitled to retain her equipment in full on the theory that it may be worth more than she stated it is worth in her schedules. His opposition thus properly constitutes an "objection" within the plain meaning of the statute. Significantly, the statute does not distinguish between different kinds of objections. On the contrary, it naturally applies to *all* objections to a claim of exemption filed with the court, and a party in interest with *any* "reason or argument" that property listed should not be exempt must step forward and present the objection in a timely manner. Otherwise, the property is exempt.

In turn, the ordinary meaning of the term "property" is "something owned or possessed" or "something to which a person has legal title." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, 943 (1984). The term naturally connotes not only the tangible item itself, but also the bundle of rights that go along with it, and not simply the item's monetary value. As the Court has explained:

> "Property" is more than just the physical thing...It is the tangible and the intangible. Property is composed of constituent elements and of these elements the right to *use* the physical thing to the exclusion of others is the most essential and beneficial. Without this right all other elements would be of little value.

*Dickman v. Comm'r*, 465 U.S. 330, 336 (1984) (citation and marks omitted) (emphasis in original); *see also United States v. Craft*, 535 U.S. 274, 278 (2002) ("A common idiom describes property as a 'bundle of sticks'–a collection of individual rights which, in certain combinations, constitute property."). Where, as here, a trustee fails to object to an exemption claim, the "property" claimed as exempt is, under the statute, exempt in its entirety.

By its terms, Rule 4003(b) likewise requires that any and all objections to the debtor's retention of an exempt asset must be presented in a timely fashion or be forfeited. The point of the Rule is to set a deadline, and, like the statute it supports, the Rule does not distinguish between different types of objections, or supply different procedural paths depending on the nature of the

objection a trustee may have.[5] Under the plain terms of both the Rule and the statute, the Trustee's failure to interpose a timely objection means that Reilly's cooking equipment is now exempt and not subject to sale.

A remarkable aspect of this case is that the Trustee appears to believe that there is no sanction for his failure to timely interpose an objection, notwithstanding that he understood the alleged grounds for his objection within the time limit set by Rule 4003(b). The Trustee argues in essence that, notwithstanding his failure to interpose an objection, Reilly somehow cannot claim the benefit of section 552(*l*) and enjoy full ownership of her equipment. Instead, he asserts, her interest is limited to the monetary amount stated in her schedules (or prescribed by statutory limit), and the Trustee may sell her property at the time of his choosing.

The Trustee has it backwards. The ability to deny a debtor his or her rights in property claimed as exempt is the privilege that arises from a timely and successful objection. It is not

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[5] Recently, the Rule was amended to provide an exception to the deadline it prescribes in cases involving fraudulent exemptions and those based on section 522(q). If anything, the expression of these limited, specific exceptions suggests strongly that no other exceptions exist. *See infra* Part VI.

granted to a forfeited objection that the Trustee never bothered to file. This is all the more so in this case, given that the Trustee has never actually demonstrated in any way that there is any merit to his contention that Reilly's cooking equipment has a value greater than that stated in Reilly's sworn schedules.

The Trustee argues that, in spite of what section 522(*l*) says, it actually means something else. Specifically, the Trustee argues that, when property is rendered "exempt" under section 522(*l*), it is "exempt" only to the extent of the value limit set forth on the schedule or elsewhere in the statute. Pet. Br. 22. Thus, he contends, where a trustee disagrees with a debtor's statement of value associated with a claim of exemption, he need not object to the exemption, but may simply proceed to sell the property in question without the need to object. Among the myriad flaws that doom this assertion, the trustee's reading of the statute is initially untenable because it is contrary to what the statute actually provides and, if accepted, would significantly gut both the statute and the Rule.

A cardinal presumption is that Congress "says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Consistent with this proposition, courts must generally refrain from engrafting limitations on

provisions of the Code that do not appear in its text. *E.g., Lamie*, 540 U.S. at 537-38; *United States v. Locke*, 471 U.S. 84, 95 (1985) (courts do not have "carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do"). Section 522(*l*) provides that, "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Period. The Trustee's effort to interlineate qualifications into the provision that would excuse his failure to file an objection is entirely improper where the statute itself reveals no legitimate ground for the alteration.

Likewise, the Trustee's argument would create a serious and unwarranted gap in the Rule. Under the Trustee's theory, any time a party in interest has an objection to a debtor's statement regarding the value of an exempt asset, the party need say nothing. Having said nothing, the party may then seek to sell the asset at some later point in time. This result, of course, would render Rule 4003(b)'s thirty day deadline meaningless for a very large class of exemption objections. Once again, there is no basis for creating this gap, or for defeating the deadline that the Rule so clearly delineates.

The Trustee argues that, although Reilly was entitled to know she was entitled to keep her $10,718 interest in the equipment upon expi-

ration of the objection deadline, she was not entitled to know whether she could keep the equipment itself. Pet. Br. 25. But there is nothing in Rule 4003(b) that supports this distinction. Rule 4003(b) is a "claims-processing" rule that establishes a deadline for all objections to a claim of exemption. Like other claims-processing rules, the objections it regulates "can...be forfeited if the party asserting the rule waits too long to raise the point." *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004). Reilly was entitled to know by the Rule's stated deadline if the Trustee had any objections to her claim. When the deadline passed without any objection being filed, the Trustee forfeited any right to treat the property listed on her schedule as anything other than exempt.

The Trustee's argument in this case is all the more tenuous because, even if the cooking equipment were worth more than the $10,718 Reilly stated it is worth in her schedules, Reilly may amend her schedules to capture at least a part of any increase in value by reallocating her exemptions. In addition, because the cooking equipment consists of numerous items, she might exempt some of them in full, sacrificing others to the extent necessary. All this assumes, however, that the equipment is actually worth what the Trustee suggests it is worth–a point the Trustee has never, in fact, substantiated. Under the circumstances, the Trustee's argument amounts to little more than the contention that,

regardless of whether a sale is likely to generate more value than a debtor's exemption limits, a trustee who fails to object to the debtor's claim may nevertheless deprive the debtor of the tools of her trade for the sake of gambling that a sale might generate more than the debtor's exemption entitlement. This position is impossible to square with the statute and Rule.

It is true, of course, that in some instances a debtor will list as exempt only a portion of the stated value of an asset. For example, suppose a bankrupt debtor owns a mobile home worth $40,000 free and clear of any liens. Suppose further that the debtor elects to take the federal exemptions allowed under section 522(d). Under section 522(d)(1), a debtor is currently permitted to exempt no more than $20,200 of homestead value (plus up to an additional $1,075 of unused exemption under section 522(d)(5)). Accordingly, the debtor in the hypothetical might list the home on his schedule C, state the value of the home at $40,000, and claim the value of the exemption as $20,200 under section 522(d)(1) (plus up to an additional $1,075 under section 522(d)(5)). Under these circumstances, where the debtor clearly indicated that he was *not* claiming the entire value of the home as exempt, the trustee might arguably be able to move to sell the home without interposing an objection. This might arguably be so because, where the debtor effectively *concedes* that he is not entitled

to the full value of the asset, there is perhaps no reason, and thus no basis, for the trustee to "object."

On the other hand, if the debtor in the hypothetical listed the value of the mobile home as worth $20,200 (*e.g.*, because the debtor believed that this was what it was truly worth), and then claimed the full $20,200 value as exempt, the trustee would have to object to the exemption if the trustee believed the home was worth more than the stated value and the trustee wished to sell the residence. Under this variation of the hypothetical, the trustee would be required to object because, by listing the full value as exempt, the debtor clearly signaled his intent to exempt the property in its entirety and did *not* concede that he was not entitled to the full value of the asset. In this case, Reilly plainly did not concede that any portion of the value of her cooking equipment was beyond the scope of her exemption. Accordingly, in order to preserve any right to reach the equipment, the Trustee was required to object.

The Trustee in this case presents a manifestly implausible reading of section 522(*l*) and Rule 4003(b). But even if there were some merit to the Trustee's presentation, any doubt should be resolved against him because his interpretation lies in derogation of the Bankruptcy Code's fundamental "fresh start" policy.

As the Court has long recognized, the policy of affording the "honest but unfortunate" debtor a "fresh start" is one of the Code's most essential themes. *See Marrama*, 549 U.S. at 367 ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"); *Perez*, 402 U.S. at 649; *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 588 (1935); *Local Loan Co.*, 292 U.S. at 244; *Stellwagen*, 245 U.S. at 617. As the Court has also recognized, a debtor's right to exempt property from the reach of creditors–essentially, to discharge the property from the burden of preexisting debt–is a key component of the "fresh start" concept. *See Rousey*, 544 U.S. at 325. As explained in the House Report accompanying section 522 of the Code:

> The historic purpose of these exemption laws have [sic] been to protect the debtor from his creditors, to provide him with the basic necessities of life so even if creditors levy on all of his non-exempt property, the debtor will not be left destitute and a public charge... [T]he bill continues to recognize the state's interest in regulating credit within the states, but enunciates a bankruptcy policy favoring a fresh start...Bankruptcy exists to pro-

> vide relief for an overburdened debtor.

H.R. Rep. No. 595, 95th Cong. 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. Because this fresh start value is fundamental to the administration of bankruptcy, procedures that burden the debtor's exemption entitlements, like those that impair a debtor's discharge generally, are to be construed narrowly. *See Kawaauhau*, 523 U.S. at 62.

In this case, the Trustee seeks an open-ended construction of section 522(*l*) and Rule 4003(b) that would plainly burden a debtor's ability to exempt "tools of the trade" vital to his or her earning a living. Because the Trustee's interpretation plainly impairs the fresh start concept, it is to be avoided. For this reason as well, the Court should reject the Trustee's interpretation of the section and Rule.

The Trustee contends that Reilly's interest in her cooking equipment is not threatened because, whatever value it may fetch at auction, she is assured of receiving a share of the proceeds up to the amount of her exemption entitlement. Pet. Br. 25. The Trustee, however, is wrong, and the facts of this case exemplify why exempted property itself is often worth more than its liquidation value. Reilly is a caterer who relies on her kitchen equipment to make her

living. Because her parents sacrificed to purchase the equipment for her, it further holds for her a great sentimental value. To achieve her "fresh start" in the manner Congress intended, she needs the equipment, not her share of its liquidation value (perhaps after deduction is taken for the expenses of the auctioneer).

Further, there is no guarantee that an auction would realize anything near what the Trustee hopes to realize. Among other factors, Reilly's equipment is used, not new. Of course, the only downside for the Trustee is that the auction may not (indeed almost certainly will not) realize anything for creditors after taking into account Reilly's exemption entitlement and the expenses incurred in conducting the auction. In contrast, the almost certain downside for Reilly is the devastating loss of her property and the prospect of recovering from the auction a woefully inadequate means to replace even part of her "tools of the trade."

Moreover, as noted, there is no warrant for the Trustee's assumption that he is entitled to auction off each item of Reilly's equipment. Had the Trustee timely objected to Reilly's claim of exemption with a meritorious argument, Reilly might have responded by apportioning her equipment, choosing to sacrifice one or two items to save the rest. Alternatively or in addition, she might have reallocated and relied upon other

available exemptions.[6] There is no reason why the Trustee is entitled to deny her this recourse.

## II. The Court Below Properly Followed *Taylor*.

The court of appeals properly concluded that the outcome of this case is readily resolved under the Court's analysis in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). As noted, the debtor in *Taylor* (Davis) sought to exempt an asset–a lawsuit–by listing the suit in her schedules and claiming its value as "unknown." *Id.* at 640; *Taylor v. Freeland & Kroonz*, 938 F.2d 420, 421 (3d Cir. 1991). After reviewing the debtor's schedules and inquiring further about the suit, the trustee in *Taylor* decided not to object. *Taylor*, 503 U.S. at 641. The trustee explained that, based on his experience, he thought it unlikely that the suit would generate funds in excess of the debtor's exemption limit. After the suit yielded a settlement of $110,000, however, the trustee demanded the money be turned over as an asset of the debtor's bankruptcy estate. *Id.* The Court rejected the trustee's claim, and its reasoning applies with even greater persuasive force to the present controversy.

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[6] Reilly could perhaps have re-characterized her coffee maker or microwave oven as personal property, for example. JA 51a-52a.

In *Taylor*, the Court observed that it was undisputed that "Davis did not have a right to exempt more than a small portion of [the $110,000 proceeds from her suit] either under state law or under the federal exemptions..." *Id.* at 642. Nevertheless, by listing the lawsuit in her schedules and claiming the *exemption value* as unknown, "Davis in fact claimed the full amount as exempt." *Id.* The Court then observed that, "as a result, [the trustee] apparently could have made a valid objection under § 522(*l*) and Rule 4003 if he had acted promptly." *Id.* In other words, the trustee could have challenged Davis' valuation. Because he failed to do so, the entire lawsuit became exempt.

If listing an asset and stating its exempt value as "unknown" is sufficient to trigger a trustee's duty to object to the claim of exemption or forever lose the right to reach the asset, then certainly Reilly's actions in this case are at least as sufficient. Where a debtor states the exempt value of an asset as "unknown," it is at least arguable that the debtor is not taking a position on how much of the asset he or she is exempting. On the other hand, where, as here, the debtor states the value of an asset and then claims the full value as exempt, the debtor's intention to claim the entire asset as exempt is perfectly clear, and the trustee's duty to object unarguably arises if the trustee wishes to preserve any right to reach the asset.

The Trustee in this case argues that *Taylor* is distinguishable on the theory that it "stand[s] for the unremarkable proposition that a trustee is required to file a timely objection in circumstances in which the debtor's claimed exemption is *improper*." Pet. Br. 26 (emphasis in original). But this characterization begs the question of what constitutes an "improper" exemption claim sufficient to trigger a trustee's duty to object. In this respect, Reilly's exemption is indistinguishable from the debtor's claim in *Taylor*.

In *Taylor*, the Court concluded that, from the trustee's perspective, Davis had made a potentially "improper" claim by asserting the entire value of her lawsuit as exempt regardless of whether the suit's value exceeded her applicable exemption limit. By the same token, Reilly's claim was no less potentially "improper" to the extent the Trustee believes the value of her equipment may also exceed her exemption limit. At the time objections were due in both *Taylor* and in this case, neither the trustee in *Taylor* nor the Trustee here could be certain that the claimed exemption was *actually* improper. For example, if the settlement in *Taylor* had generated a mere $1,000, it would have been properly exempt in its entirety under any analysis. Likewise, if any sale of Reilly's equipment realized less than her exemption availability, the Trustee

would similarly recover nothing. Thus, in both cases, at the time objections were due, the actual propriety of the exemption turned on future contingent events (the subsequent settlement in *Taylor*, and a potential sale here).

Just as uncertainty over the value of the lawsuit in *Taylor* did not excuse the trustee from objecting, it also does not excuse the Trustee in this case. A trustee who wishes to preserve any potential right to deprive a debtor of an asset claimed as exempt must object where, as here, the debtor does not concede in his or her schedules that the value of the relevant asset exceeds the amount claimed as exempt.

## III. Construed in Context, the Trustee's Interpretations of Section 522(*l*) and Rule 4003(b) Are Without Merit.

As the Court has explained, the provisions of the Bankruptcy Code are properly construed "holistically," taking into account the structure of the Code as a whole, the relationship between its various provisions, and Congress' collective and systematic choice of words. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 369-71 (1988) (construing several sections of the Bankruptcy Code together and observing that "[s]tatutory construction...is a holistic endeavor."); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a

sentence, but look to the provisions of the whole law") (citations omitted). In this case, reference to the relevant text and structure of the Code and Rules as a whole demonstrates that the Trustee's failure to object to Reilly's claim of exemption means that her cooking equipment is properly exempt in its entirety.

If Congress had intended to limit the effect of section 522(*l*) to "exempt" property only to the extent of any value limit set forth on the debtor's schedule or elsewhere in the statute, Congress easily could have said so. Yet, in drafting section 522(*l*), Congress did not limit the effect of this particular provision to any actual or stated values. It simply provided that "[u]nless a party in interest objects, the property claimed as exempt on [the debtor's schedule] is exempt." 11 U.S.C. § 522(*l*).

As this Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citations and marks omitted). Whenever Congress intends to limit the availability of bankruptcy relief based on the stated monetary amounts, it generally does so expressly. For example, section 109(e) renders debtors whose debts exceed certain lim-

its to be ineligible for relief under chapter 13. *See* 11 U.S.C. § 109(e). Because Congress has not included a similar limit in section 522(*l*), the Court should not infer that one exists there. *See Toibb v. Radloff*, 501 U.S. 157, 161 (1991) (refusing to infer exception to section 109 of the Bankruptcy Code, stating "Congress knew how to restrict recourse to the avenues of bankruptcy relief"); *see also FCC v. NextWave Personal Commc'ns, Inc.*, 537 U.S. 293, 302 (2003) ("[W]here Congress has intended to provide...exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly").

Likewise, the Trustee's effort to limit the scope of Rule 4003(b) does not withstand contextual scrutiny. The Trustee contends that the Rule's thirty-day deadline applies only to objections "to a debtor's claim of exemption–not her asserted valuation." Pet. Br. 24. This argument is fundamentally unsound.

First, the Trustee's argument is belied by reference to Rule 4003(a), which requires that the debtor supply a valuation of claimed exemption. As noted, Rule 4003(a) requires a debtor to list the property claimed as exempt on "the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). In turn, Rule 1007(b)(1) requires a debtor to use the designated Official Forms, including Official Form 6. Schedule C attached to Form 6 requires the

debtor to list the property claimed as exempt, state the value of the exempt property, and also state the value of the claimed exemption. It is implausible for the Trustee to suggest that the very Rule that requires the debtor to state the value of an asset claimed exempt does not apply to objections to that same value. If Rule 4003(b) were limited in this odd way, one would expect the Rule to say so explicitly.

Second, the Trustee's argument is also inconsistent with Rule 4003(c). Rule 4003(c) squarely fixes on the Trustee the burden of proving that Reilly's exemptions "are not properly claimed." Fed. R. Bankr. P. 4003(c). By arguing that Rule 4003(b) does not apply to exemption valuation objections, the Trustee effectively seeks to avoid Rule 4003(c)'s burden of proof allocation. But there is no reason to believe that the Rule can be bifurcated in this strange manner. Section 522(*l*) and Rule 4003(b) properly apply to the Trustee's valuation objection.

The Trustee argues that a distinction in treatment should be drawn between so-called "in-kind" exemptions that are not subject to a monetary limit, and those that are subject to a monetary cap. There is no basis, however, in either section 522(*l*) or Rule 4003(b) for this distinction. Certainly the distinction between "in-kind" and unlimited exemptions does not appear expressly in the statutory text, and this termi-

nology is thus alien to it. More generally, neither the section nor the Rule otherwise adjust their requirements based on this dichotomy, nor do they lend it any meaning. Once again, the Trustee seeks improperly to import a qualification that the text does not condone, and have the benefit of an objection he never filed.

## IV. The Trustee's Contentions Are Inconsistent with the Historical Treatment of Exemptions in Bankruptcy.

The Court has explained that, "[w]hen Congress amends the bankruptcy law, it does not write on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (citation and marks omitted). Further, this Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998) (citations and marks omitted); *see also Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936) ("To fix the meaning of these provisions [of the Bankruptcy Act] there is need to keep in view the background of their history."). In this case, the relevant history further belies the Trustee's contention that he need not have objected to Reilly's valuation in order to sell her cooking equipment.

The history of exemptions in bankruptcy is one of an expanding concept that has evolved to ensure that the debtor receives a prompt and

comprehensive determination of any exemption entitlement, including the expeditious resolution of any and all objections to that entitlement. The law has also evolved to rely on the debtor to create a presumptively valid list of exemptions, placing the burden on the trustee to demonstrate the invalidity of any aspect of a particular exemption claim. Consistent with this history, section 522(*l*) and Rule 4003(b) are both geared, and best read, to cover and circumscribe every kind of objection a trustee may have to a debtor's claim of exemption, including objections based on valuation.

The first federal bankruptcy statute, the short-lived Act of 1800, prescribed a modest set of exemptions for the debtor and his or her dependents. Specifically, section 5 of the Act permitted the debtor initially to set aside necessary wearing apparel and bed linens. Act of Apr. 4, 1800, ch. 19, § 5, 2 Stat. 19 (repealed 1803). Thereafter, the "commissioners" responsible for certain aspects of the proceedings, and the "assignees" (trustees) responsible for other aspects, were granted discretion to make allowance from the assets of the estate for the support of the debtor and the debtor's family. *Id.* § 53; *see also id.* § 34 (permitting the debtor to keep a portion of the non-exempt assets of the estate).

Following this theme, the second federal bankruptcy statute, the equally short-lived Act

of 1841, required the assignees (trustees) overseeing the bankruptcy case to "designate and set apart" at the outset various items of property for the debtor and his or her dependents, including "necessary household and kitchen furniture" not exceeding $300 in value, and "wearing apparel." Act of Aug. 19, 1841, ch. 9, § 3, 5 Stat. 440 (repealed 1843).

Building on these procedures, the third federal bankruptcy statute, the Act of 1867, provided for a similar exemption process, and added the requirement that the debtor "annex to his petition an accurate inventory and valuation, verified in like manner, of all his estate, both real and personal." Act of Mar. 2, 1867, ch. 176, § 11, 14 Stat. 517, *amended by* Act of June 22, 1874, 18 Stat. 182 (repealed 1878). The Act allowed exemptions for "the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars." *Id.* The Act further provided for the exemption of other items, including wearing apparel, military equipment, and items that were exempted under the laws of the state of the bankrupt's domicile. *Id.*

The Act of 1867 further authorized the promulgation of various rules of bankruptcy procedure (termed "General Orders") governing the exemption process and other matters. *Id.* § 10. General Order 19, promulgated under the Act of 1867, prescribed that, after the debtor filed his schedules, the assignee (trustee) overseeing the case had the duty to:

> make report to the Court, *within twenty days* after receiving the deed of assignment, of the articles set off [exempted] to the bankrupt by him, according to the provisions of the fourteenth section of the Act, *with the estimated value of each article*, and any creditor may take exceptions to the determination of the assignee *within twenty days* after the filing of the report.

SUP. CT. GEN. ORD. XIX (1867) (emphasis added).[7] The Act further provided that "the de-

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[7] Official Form 20, promulgated under the Act of 1867, titled "Exempted Property," provided assignees under the 1867 Act with a template for his or her report to the court regarding the property of the debtor to be designated and set apart from the general assets of the bankruptcy estate. The form provided three columns: one general heading column that was pre-filled to indicate the various categories of exemptions available, one "Particular De-

termination of the assignee [with respect to the debtor's exemptions] shall, on exception taken, be subject to the final decision of the said court." Act of Mar. 2, 1867, ch. 176, § 14, 14 Stat. 517 (repealed 1878).

The Act of 1867 thus established two relevant, and ultimately enduring, themes. First, the assignee was required within a very short time to determine the debtor's exemptions and *set forth their estimated value.* Second, any objection to the debtor's exemptions was also required to be submitted expeditiously to the court for resolution. Under this system, the assignee alone did not serve as the ultimate arbiter of any dispute over the debtor's exemptions. Further, the deadlines imposed for resolving any exemption challenge were tightly drawn.

Expanding on these provisions, the fourth federal bankruptcy statute, the Act of 1898, provided that the duties of the bankrupt debtor included:

> [to] prepare, make oath to, and file in court...*within ten days* after the filing of a petition...(unless...further time is granted), a schedule of his property

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scription" column, and a final column for "Value." Sup. Ct. Bankr. Form 20 (1877).

> showing...[*inter alia*] a claim for such exemptions, as he may be entitled to...

Act of July 1, 1898, ch. 541, § 7, 30 Stat. 544, *amended by* Act of May 27, 1926, 44 Stat. 662 (repealed 1979) (emphasis added). Thereafter, the trustee was obligated to "set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after [the trustee's] appointment." *Id.* § 47.

In contrast to the Act of 1867, the Act of 1898 did not prescribe its own exemption entitlements. Rather, it incorporated and deferred to the exemption of property sheltered from execution under otherwise applicable state or federal law. Act of July 1, 1898, ch. 541, § 6, 30 Stat. 544, 11 U.S.C. 24, *amended by* Chandler Act, 52 Stat. 840 (1938) (repealed 1979) ("This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the [bankrupt's] petition").

As with the Act of 1867, the Act of 1898 authorized the promulgation of various rules of procedure. *Id.* § 30. In particular, General Order 17, promulgated under the Act of 1898, provided that:

> The trustee shall make report to the court, *within five days* after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, *with the estimated value of each article*; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee *within ten days* after the filing of the report, unless further time is granted by the court.

SUP. CT. GEN. ORD. 17(2) (1958) (emphasis added). Continuing the trend established under the Act of 1867, General Order 17 thus tightened further the deadlines governing the trustee's determination, valuation, and distribution to the debtor of his or her exempt property. It likewise tightened the deadlines governing the submission to the court of any objection to these exemptions. It is noteworthy that the trustee was responsible for supplying the estimated value of each exempt item–a duty trustees carried for over a century. *See In re Manning*, 112 F. 948, 950 (E.D. Pa. 1902) ("The order requires that each article shall have an estimated value placed

upon it, and thus requires a specification of items, and a separate appraisal.").[8]

Subsequently, Rule 403, the predecessor to current Rule 4003, was promulgated to supersede General Order 17. Rule 403 provided that "[a] bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108." Fed. R. Bankr. P. 403(a) (1975). Rule 403 further provided that:

> The trustee shall examine the bankrupt's claim for exemptions, set apart [for the debtor] such as are lawfully claimed and allowable, and report to the court the items set apart, *the amount or estimated value of each*, and the exemptions claimed that are not allowable. The report shall be filed with the court *no later than 15 days* after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or

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[8] Official Form 47 provided trustees under the 1898 Act with a template for their reports, listing "a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property." Sup. Ct. Bankr. Form 47 (1899). As with Form 20 under the 1867 Act, form 47 specifically required the trustee to list the "particular description" and the estimated "value" of the property set aside. *Id.*

> deliver copies of the report to the bankrupt and his attorney.

Fed. R. Bankr. P. 403(b) (1975) (emphasis added).[9] With respect to objections to the trustee's report, Rule 403 provided:

> Any creditor or the bankrupt may file objections to the report *within 15 days* after its filing, unless further time is granted by the court *within such 15-day period*... The burden of proof shall be on the objector.

Fed. R. Bankr. P. 403(c) (1975) (emphasis added). Further, Rule 403(e) provided that "[i]f no objections are filed within the time provided by this rule, the report shall be deemed approved by the court." Fed. R. Bankr. P. 403(e) (1975). Rule 403(e) thus introduced the concept of the automatic allowance of an exemption in the absence of objection, further expediting the process of resolving a debtor's exemption entitlement.

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[9] The advisory committee note to Rule 403(b) stated that "[t]he time allowed the trustee for filing the report...[was] extended to 15 days following the trustee's qualification in recognition of the fact that the 5-day period prescribed by the general order generates an excessive number of requests for extension." Fed. R. Bankr. P. 403(b) (1975) adv. note.

The Bankruptcy Reform Act of 1978 (Bankruptcy Code) streamlined the exemption process further by, among other things, eliminating the requirement of the trustee's report and providing instead that any party in interest, including a trustee, could object to the debtor's list. As noted, section 522(*l*) provides that:

> The debtor shall file a list of property that the debtor claims as exempt... Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C. § 522(*l*). In contrast to its statutory predecessor, section 522(*l*) not only relies on the debtor to create a list of exemptions, it also establishes that, in the absence of objection, the list is presumptively valid. Section 522(*l*) has not been altered or amended since its original enactment in 1978.

After the passage of the Bankruptcy Code, Rule 4003 was promulgated, requiring the debtor to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). As noted, Rule 1007 requires that the debtor file a schedule of assets using the appropriate form. Fed. R. Bankr. P. 1007(b)(1). In addition, the version of Rule 4003(b) in effect at

the time Reilly filed her bankruptcy petition, provided that:

> a party in interest may file an objection to the list of property claimed as exempt *within 30 days* after the meeting of creditors...is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b) (2000) (emphasis added).

In conjunction with eliminating reliance on the trustee to prepare a report detailing and valuing the debtor's exemptions, the current Code and Rules allow the trustee *more* time to examine and object to the debtor's presumptively valid list. On the other hand, there is no indication that section 522, or the provisions in the Rules that implement it, were intended to excuse the trustee from having to object to a debtor's exemption valuation in order to preserve any ability the trustee might have to reach assets claimed as exempt. On the contrary, the thrust of the relevant history points in the other direction, and the statutory scheme has always been

designed to require compliance with its provisions to ensure the prompt, efficient, and comprehensive determination of the debtor's exemption entitlements, including the resolution of any controversy over the debtor's entitlement based on the valuation of a claimed exemption.

The Trustee contends that he should be excused from having to object to a debtor's valuation of an exemption claim to preserve his ability to sell the asset underlying the claim because having to object on the basis of valuation is too great a burden. Yet for more than a century, trustees in bankruptcy carried *far more onerous* exemption-related duties–*e.g.*, they were required to prepare and file a report to the court of all items to be set aside for the debtor as exempt in each and every case, including an estimated valuation of each item of property. In light of this history, the Trustee's contention rings hollow.

As it has evolved, the relevant, current practice in bankruptcy is that, if a trustee has an objection to a debtor's exemption based on the debtor's valuation of the exempt asset, the trustee will assert the objection. 4 COLLIER ON BANKRUPTCY ¶ 522.05[2][b] (15th ed. rev. 2007) ("Normally, if a debtor lists an asset as having a particular value in the schedules and then exempts that value, the schedules should be read as a claim of exemption for the entire asset, to

which the trustee should object if the trustee believes the asset has been undervalued."). For example, the early suggested form for trustee objections to the debtor's claim of exemptions in the leading bankruptcy treatise provided three sample objections under section 522(*l*). *See* Form 2-202, 6 COLLIER ON BANKRUPTCY ¶ II-76.4 (15th ed. 1995). Tellingly, *all three* examples were objections as to valuation. The first sample objection stated:

> The debtor is not entitled under 11 U.S.C. § 522(d)(2) to an interest of more than $2,400 in an automobile. The automobile claimed by debtor as exempt under this section of the Code is free and clear of liens and has a value substantially greater than $2,400.

*Id.* Perhaps due to Form 2-202's common use, the most recent series of suggested forms specifically separate out objections as to value in Form CS17.14-1, which likewise provides three sample objections that all deal strictly with valuation. 13A COLLIER ON BANKRUPTCY ¶ Pt. CS17-22 (15th ed. rev. 2007); *see also id.* at Pt. CS17-24 (Form CS17.14-2) (form order for court use, providing, *inter alia*, sample ruling that "[t]he debtor's [vehicle] which is claimed as exempt...has a reasonable market value of...[court enters value] and is free and clear of liens...[and

therefore] exceeds debtor's permissible exemption..."). Because the Trustee in this case failed to object to Reilly's claim of exemption, he cannot now claim any right to sell Reilly's cooking equipment.

## V. The Trustee's Position Is Contrary to the Policy of Finality Underlying Section 522(*l*) and Rule 4003(b).

In discerning the meaning of a statutory provision, it is helpful to look "not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." *Dada v. Mukasey*, 128 S. Ct. 2307, 2317 (2008) (quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991)). In addition to the "fresh start" policy discussed above, reference to the policy of finality that underlies section 522(*l*) and Rule 4003(b) further supports the conclusion that, absent a timely objection, the Trustee cannot now seek to sell Reilly's exempt cooking equipment.

This Court has often held that finality is a "vitally important" consideration in the adjudication of legal rights. *Yeager v. United States*, 129 S. Ct. 2360, 2365-66 (2009); *see also Massaro v. United States*, 538 U.S. 500, 504 (2003) (the law has an "important interest in the finality of judgments."). Bankruptcy, which has been described as "an intensely practical affair," *In re Cooper Commons LLC*, 512 F.3d 533, 534 (9th Cir.

2008), demands finality all the more, as debtors and creditors both make financial decisions based on outcomes mandated by the Code. *See, e.g., Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2205-06 (2009) ("[I]t was error for the Court of Appeals to reevaluate the Bankruptcy Court's exercise of jurisdiction" years earlier, because, in part, such a review was "at odds with finality.").

In *Taylor*, this Court indicated that finality is a key rationale for the thirty-day objection period established by Rule 4003(b). *Taylor*, 503 U.S. at 644 ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality."). If the thirty-day deadline passes without any party in interest challenging a debtor's claimed exemptions, the debtor is entitled to know that he or she may take the exempt property out of bankruptcy.

Finality further supports the related public goal of an efficient bankruptcy process. Congress has often substantially revised the Bankruptcy Code at various times with an eye toward increasing its efficiency. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 63, n.16 (1989) ("The sweeping changes Congress instituted in 1978 were clearly intended to make the reorganization process more efficient," and "enhanced efficiency was likely Congress's aim once again [in the 1984 amendments].") Finality in the exemption

process promotes efficiency by establishing a specific time-table for addressing exemptions, and mandating that a trustee may not return to the issue after the thirty-day deadline has passed without first interposing a timely objection.

Under the Trustee's suggested interpretation of Rule 4003(b), a debtor would never have the certainty of knowing whether or not he or she may keep her exempted property until the case had ended, which often happens years after the case is originally filed. Honest debtors such as Reilly need finality, not just at the end of bankruptcy when the case is closed, but at different stages throughout. Finalizing a debtor's exempted property at an early stage allows the debtor to begin post-bankruptcy planning promptly, reinforcing the fresh start policy. Certainty regarding the availability of exempted property–particularly where, as here, the relevant exempt assets are "tools of the trade"–fosters a seamless emergence from bankruptcy, improving the prospects for financial accountability and success. Here, once the thirty-day deadline passed without objection, Reilly was entitled to know that she would emerge from bankruptcy with her cooking equipment intact. The Trustee may not prefer this result, but the policy underlying Rule 4003(b) dictates that this finality be maintained.

Critically, section 522(*l*) and Rule 4003(b) work in tandem to balance the respective interests of debtors and creditors. Although any party in interest, including a trustee, may challenge a debtor's claim of exemption to ensure that it has been fairly asserted, the opportunity to do so is properly short. As the court below explained, "[o]nce the period for objection lapses [without an objecting being taken], all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor. The debtor can then use that property with the knowledge that it is her own and will not be subject to later liquidation for the benefit of creditors." Pet. App. 16a-17a. Similarly, as the circuit court decision leading to *Taylor* itself explained:

> where there is a date when the parties' rights can be finally determined–in this case, thirty days after the creditors' meeting if no objection is filed–the parties can proceed from that date knowing which property is property of the estate and which property belongs to the debtor. The debtor from that day forward can treat exempted property as his or her own and is not forced to wait until some unknown future date when the trustee or another party in interest might haul the debtor into court seeking that property.

*Taylor v. Freeland & Kronz*, 938 F.2d 420, 425 (3d Cir. 1991); *accord Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 877 (B.A.P. 6th Cir. 2007).

In this case, if successful, the Trustee's argument would plainly thwart the policy of finality by carving out from section 522(*l*) and Rule 4003(b) a broadly open-ended exception permitting a trustee who never filed a timely objection to a debtor's claim of exemption to nonetheless sell the debtor's exempt property out from under him or her. The creation of such a cloud on the title of exempt property is unwarranted, and for this reason as well the Court should reject the Trustee's position.

## VI. The Decision of the Court of Appeals Is Sound and Workable, and the Consequences of the Trustee's Position, If Adopted, Would Cause Serious Difficulties.

There is no merit to the Trustee's contention, urged also by the United States, that the decision of the court below is unworkable or will generate dire or untenable consequences. For the most part, the Trustee's concerns have already been considered and rejected by this Court in *Taylor*. The Court should likewise reject them here.

In this case, the Trustee contends that the Third Circuit's holding "would give debtors a perverse incentive to game the system by undervaluing their assets, and grant dishonest (or mistaken) debtors a windfall that more honest or diligent debtors would not receive." Pet. Br. 35; *see also* Gov. Am. Br. 27 (Third Circuit's rule would "create an additional incentive to [make] undervaluations of property."). The trustee in *Taylor* made essentially the same argument, insisting that any rule that requires a party in interest to file an objection to an improper valuation of an exempt asset "will lead debtors to claim property exempt on the chance that the trustee and creditors, for whatever reason, will fail to object to the claimed exemption on time." *Taylor*, 503 U.S. at 644. Significantly, the Court responded that "[t]his concern...does not cause us to alter our interpretation of § 522(*l*)." *Id.* Specifically, the Court refused to weigh the competing incentives generated by one conclusion or the other, stressing that, to the extent change was needed to respond to any particular outcome, "Congress may enact...provisions to address the difficulties that Taylor predicts will follow our decision. We have no authority to limit the application of § 522(*l*)...." *Id.* at 644-45.

Moreover, as the Trustee concedes, the Bankruptcy Code "provides 'penalties under various provisions for engaging in improper conduct in bankruptcy proceedings.'" Pet. Br. 35

(quoting *Taylor*, 503 U.S. at 644). Indeed, in *Taylor*, the Court identified numerous provisions of the Code that discourage bad faith, including: "11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to 'be verified or contain an unsworn declaration' of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not 'well grounded in fact and...warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law'); [and] 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases)." 503 U.S. at 644.

In addition, although Congress has not altered section 522(*l*) since the Court's decision in *Taylor* (in spite of multiple opportunities to do so–suggesting implicitly Congress' acquiescence in the result and the status quo), Rule 4003 has not remained static. In 2008, an amendment to the Rule took effect that creates an exception to its thirty-day deadline in cases of fraud, and, further, for matters governed by section 522(q). Specifically, Rule 4003(b)(2) now provides: "The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption." Fed. R. Bankr. P. 4003(b)(2). Likewise, Rule 4003(b)(3) provides: "An objection to a claim of exemption based on §

522(q) shall be filed before the closing of the case." Fed. R. Bankr. P. 4003(b)(3).

These amendments are significant for two reasons. First, they add yet another deterent to wrongful conduct. Second, they suggest rather starkly that the *only* exceptions to the thirty-day deadline exist in cases of fraud or those to which section 522(q) applies as set forth in new Rules 4003(b)(2) and 4003(b)(3). With these amendments, there is now even less room in Rule 4003 for any conclusion that a Trustee who fails to file a timely objection may nonetheless undo a debtor's claim of exemption through a sale of the exempt property.

In any event, in addition to the fact that ample provisions are available to deter and remedy wrongful conduct, the court below observed that there is no indication of any wrongful behavior on Reilly's part in this case, and, accordingly, as far as the record is concerned, the Trustee's concerns remain entirely speculative. Pet. App. 17a-18a.

Further, consideration of the incentives created by different outcomes does not cut unilaterally in the Trustee's favor–far from it. Indeed, the position that the Trustee and the Government both urge would itself likely encourage bad faith in some instances. The Government suggests that the Trustee's approach "entails no

unfairness to debtors. If a debtor intends to exempt the full value of an asset, whatever that value may be, she may convey that intent by saying so explicitly or by using 'unknown' or similar language to describe the value of the claimed exemption." Gov. Am. Br. 27. But this reasoning is flawed. *See Anderson*, 377 B.R. at 875-76. Under the Government's formulation, for example, Reilly could properly value the property she wished to fully exempt as "unknown" on her Schedule C, even though she believed it to be worth $10,718. In other words, under the Government's approach, it is permissible to withhold information even though a major point of the schedules is to extract information to inform the bankruptcy administrative process.

As noted, a further flaw in the Government's and the Trustee's reasoning is their assumption that the "correct" market value of the cooking equipment is actually approximately $17,000. There is simply no substantiating evidence of this value in the record, and the assumption rests entirely on the apparent hearsay statement of what an auctioneer said to the Trustee. Given the fact that the equipment is used, and was purchased several years before Reilly commenced her bankruptcy case, her sworn statement of its value at $10,718 is probably more accurate, and is certainly more probative from a record and evidentiary perspective.

Debtors should be encouraged to be truthful and forthright in all aspects of the bankruptcy process. Indeed, debtors have a legal obligation to be truthful. When submitting their schedules, debtors must sign a "Declaration Concerning Debtor's Schedules," in which they must declare, under penalty of perjury, that they have read the summary and schedules and the documents are "true and correct to the best of [their] knowledge, information and belief." *See* Fed. R. Bankr. P. Form 6, Declaration Concerning Debtor's Schedules (2007). Under the Government's unsound interpretation of section 522, however, debtors could be encouraged to be untruthful.[10]

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[10] Rather than eliminate perverse incentives, the Government's position would actually create them. Incentivizing debtors to state "unknown," or some other contingent amount on their schedules could cause debtors to reallocate exemption amounts they would have otherwise used up on the specific item they actually sought to exempt. For example, the debtor might state "unknown" for several items, and then use the available exemption amounts to cover items the debtor otherwise would have used up for the items he or she stated as "unknown." This would result in an overall lower recovery for creditors because more items would be exempted than if debtors were incentivized to state the estimated value of their property in good faith. Alternatively, under the Trustee's approach in this case, debtors who act in good faith may end up over-allocating their available exemptions to specific property to ensure that it is saved—resulting in a debtor taking less exemptions than Congress intended him or

The Trustee's other arguments regarding the alleged unworkability of the Third Circuit's holding are also flawed. He asserts that trustees are overwhelmed with bankruptcies, and he claims that requiring trustees to object to the exemptions of debtors like Reilly would be impractical because trustees have neither the time nor the resources to perform or outsource investigatory work. Pet. Br. 32-33. And yet, in this case, the trustee arranged for an appraisal before the meeting of creditors and came to the meeting armed with his own valuation of the equipment. The record in this case thus does not support the Trustee's contention. Likewise, as noted previously, the burden on trustees in administering a debtor's exemptions entails far less work than it has historically on a per case basis. Further, examining and investigating a debtor's exemptions is part of a trustee's official duties. *See* U.S. Dep't of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* 6-3, 6-5, 7-5, 8-2 (2002) (hereinafter *Trustee Handbook*). Moreover, where there is any doubt regarding a debtor's claimed exemption, the trustee may

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her to have. For example, if a debtor is worried about keeping a particular item, the debtor may overstate its value, and use up more of his or her exemption availability than necessary, simply to avoid the trustee selling the item to test its worth.

seek a hearing on the issue or request an extension of time to object. *Taylor*, 503 U.S. at 644.

As also noted previously, other consequences of the Trustee's position include casting a cloud over the title of exempt property well beyond the thirty-day deadline–indeed for the entire duration of the debtor's bankruptcy proceeding, which, by the Trustee's own reckoning, could last four years. *See* Pet. Br. 32 (citing report).

In addition, the Trustee's position might generate the unfortunate incentive of encouraging trustees to act as speculators. If a trustee may sell a debtor's exempt property notwithstanding his or her failure to object to a claimed exemption within the thirty-day period specified by Rule 4003(b), the trustee would have an incentive to do so merely where, because of market forces or fluctuations, the trustee believes the value of a particular exempt asset has risen above the limit of the debtor's exemption entitlement. This, of course, could easily become vexatious and would only further erode the paramount interest in finality that the Rule seeks to promote.

The relative incentives therefore actually cut against the Trustee's position. Indeed, overall, the likely outcome is that the Trustee's position, if adopted, would cause more harm than good. In any event, as the Court observed in

*Taylor*, it is properly a matter best addressed to Congress rather than the courts.

## VII. The Trustee's Position Is Inequitable.

Although a chapter 7 trustee's "principal duty...is to collect and liquidate the property of the estate and to distribute the proceeds to creditors," *Trustee Handbook* 6-1, it is also recognized that a chapter 7 case should be administered to "facilitate a fresh start for the debtors entitled to a discharge." *Id.* Central to both goals is the trustee's responsibility to examine, investigate, and ultimately value the debtor's assets and exemptions. *See, e.g., id.* ("The trustee shall...investigate the financial affairs of the debtor"); *id.* at 6-3; *id.* at 7-3 (trustee must determine the existence of a debtor's "exemptions"); *id.* at 8-3 ("A trustee should abandon any estate property that is burdensome or of inconsequential value to the estate.").

In this case, the Trustee determined prior to the meeting of creditors that Reilly's cooking equipment might be worth more than she stated. Yet he never filed an objection to her exemption. Moreover, because Reilly may potentially reallocate her exemptions to capture additional value from her equipment, or select to retain some items of the equipment and sacrifice others, it is difficult to understand the fairness of the Trustee's position.

As the Trustee's Handbook provides, before attempting to sell assets (and incurring any associated cost in doing so), the trustee must determine first "whether sufficient funds will be generated to make a meaningful distribution to creditors." *Id.* at 8-1. If that is not likely, the trustee should abandon the initiative. *See, e.g., id* at 8-3 (the "trustee should abandon any estate property that is burdensome or of inconsequential value to the estate."). In other words, the "trustee should *only* sell assets that will generate sufficient proceeds to ensure a distribution to unsecured creditors." *Id.* at 8-17 (emphasis added). Likewise, "[p]roperty should be abandoned when the total amount to be realized [from its liquidation] would not result in a meaningful distribution to creditors or would redound primarily to the benefit of the trustee and professionals." *Id.* at 8-3.

Because there would likely be no benefit to creditors arising from the Trustee's pursuit of Reilly's exempt assets in this case, it is inequitable for the Trustee to pursue Reilly's exemption and attempt to deprive her of the benefit of her cooking equipment.

## CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

Gino L. Andreuzzi
85 Drasher Road
Suite II
Drums, PA 18222
(570) 788-5373

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
Alexander R. Bilus
Michael J. Newman
Joshua Richards
Justin C. Danilewitz
Kate O'Keeffe
Francesco P. Trapani
DECHERT LLP
90 State House Square
Hartford, Connecticut 06103
(860) 524-3999

Dated: September 18, 2009 *Counsel for Respondent*

# STATUTORY APPENDIX

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## 11 U.S.C. § 522 (2005)–Exemptions

(a) In this section –

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such

election is permitted under the law of the jurisdiction where the case is filed. Such property is –

> (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,
>
> (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and
>
> (B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

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(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,950 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $475 in value in any particular item or $9,850 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,225 in value, in jewelry held primarily for the personal, family, or

household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $975 plus up to $9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,850 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $9,850 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive –

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless –

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to –

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $18,450, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

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(*l*) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

***

**Federal Rule of Bankrupty Procedure 4003 (2005)–Exemptions**

(a) Claim of exemptions—A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions—A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for

cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof—In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property—A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

**Federal Rule of Bankrupty Procedure 4003 (2008)–Exemptions**

(a) Claim of exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions.

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) A copy of any objection shall be delivered or mailed to the trustee, the debtor and the

debtor's attorney, and the person filing the list and that person's attorney.

(c) Burden of proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

**Supreme Court General Order XIX (1867)—Duties of Assignees**

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession; and all sales of the same shall be by public auction, unless otherwise ordered by the Court. Every assignee shall keep full, exact, and regular books of account of all receipts, payments, and expenditures of money by him, and shall make report to the Court, within

twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the Act, with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report.

**Supreme Court General Order XIX (1877)—Duties of Assignees**

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession, except where an inventory is furnished to him by the marshal; in which case, having verified the same, he shall add thereto a certificate that the same is correct, or that the same is correct as modified by a supplemental inventory, to be annexed thereto; in which supplemental inventory he shall state any deficiency of assets named in the marshal's inventory, and shall add any property or assets not contained therein.

The assignee shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the act, with the estimated value of each article, and any creditor

may take exceptions to the determination of the assignee within twenty days after the filing of the report. The register may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. The substance of each monthly return of the assignee shall be sent by the register to any creditor who shall request it and pay the fee provided for notices to creditors. In case the assignee shall neglect to file any report or statement which it is made his duty to file or make by the bankrupt act, or any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the register to make an order requiring the assignee to show cause before the court, at a time specified in the order, why he would not be removed from office. The register shall cause a copy of the order to be served upon the assignee at least seven days before the time fixed for the hearing, and proof of the services thereof to be delivered to the clerk. All accounts of assignees are to be referred as of course to the register for audit, unless otherwise specially ordered by the court.

**Supreme Court General Order 17 (1958)—Duties of Trustee**

(1) The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all of the property of the bankrupt or debtor that comes into his possession unless, prior thereto, a receiver or other officer has prepared such an inventory.

(2) The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court.

(3) In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act or by these general orders, within five days after the same shall be due, it shall be the duty of the court to make an order requiring the trustee to show cause, at a time specified in the order, why he should not be removed from office. The court shall cause a copy of the order to be served upon the trustee at

least three days before the time fixed for the hearing.

(4) All accounts of trustees and receivers shall be referred as of course to the referee for audit, unless otherwise specially ordered by the judge.

**Fed. R. Bankr. P. 403 (1975)—Exemptions**

(a) *Claim of Exemptions.* A bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108.

(b) *Trustee's Report.* The trustee shall examine the bankrupt's claim for exemptions, set apart such as are lawfully claimed and allowable, and report to the court the items set apart, the amount or estimated value of each, and the exemptions claimed that are not allowable. The report shall be filed with the court no later than 15 days after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or deliver copies of the report to the bankrupt and his attorney.

(c) *Objections to Report.* Any creditor or the bankrupt may file objections to the report within 15 days after its filing, unless further time is granted by the court within such 15-day period. Copies of the objections so filed shall be

delivered or mailed to the trustee and, if the objections are by a creditor, to the bankrupt and his attorney. After hearing upon notice the court shall determine the issues presented by the objections. The burden of proof shall be on the objector.

(d) *Procedure if No Trustee Qualified.* If no trustee has qualified, the bankruptcy judge shall file the report prescribed by subdivision (d) of this rule within 15 days after the first date set for the first meeting of creditors. If the bankrupt files objections to the report, the court shall appoint a trustee or receiver, who shall represent the estate in the hearing on the objections.

(e) *Approval of Report if No Objections.* If no objections are filed within the time provided by this rule, the report shall be deemed approved by the court. On request, the court may at any time and without reopening the case, enter an order approving the report.

(f) *Claim of Exemption by Person Other Than Bankrupt.* If the bankrupt fails to claim the exemptions to which he is entitled, or if he dies before his exemptions have been set apart to him, his spouse, dependent children, or any other persons who are entitled to claim the exemptions allowable to the bankrupt may, within

such time as the court may order, file a claim for his exemptions or object to the report.

# REPLY BRIEF

143 (11)

No. 08-538

Supreme Court, U.S.
FILED
OCT 19 2009
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE
Trustee for Nadejda Reilly,

*Petitioner,*

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## REPLY BRIEF FOR PETITIONER

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
DANIEL S. VOLCHOK
LESLIE S. GARTHWAITE
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 663-6000

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IN THE

# Supreme Court of the United States

No. 08-538

WILLIAM G. SCHWAB, ESQUIRE,
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*Petitioner,*

*v.*

NADEJDA REILLY,

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## REPLY BRIEF FOR PETITIONER

The Bankruptcy Code and Rules establish a straightforward mechanism for determining which property of the debtor is exempt from the bankruptcy estate. The debtor files a schedule claiming certain property as exempt. A trustee and other parties in interest then have the opportunity to object to the claim of exemption. Absent an objection filed by the deadline, the property claimed as exempt is deemed to be exempt.

Here, respondent Nadejda Reilly claimed an exempt interest, up to $10,718, in her kitchen equipment. Petitioner William Schwab, the bankruptcy trustee,

agreed that Reilly is entitled to an exemption in that amount, and therefore did not object to the claimed exemption. But Reilly now asserts a right to keep the equipment itself even if it turns out to be worth substantially more than the $10,718 that she claimed as exempt. She offers two basic arguments to justify this demand, each related to the fact that, on her exemption schedule, she also estimated the value of the equipment to be $10,718. First, Reilly contends that when Schwab did not object to her claimed exemption, her estimate of the equipment's value became unchallengeable. Second, she contends that simply by writing the same amount for the claimed exemption and the estimated value, she put Schwab and her creditors on notice that she was claiming all of her kitchen equipment as exempt, regardless of what its value turned out to be.

Each of these arguments is fundamentally flawed. As to the first, the plain language of the Code and of Rule 4003 limits their reach to objections to exemptions, thereby foreclosing Reilly's argument that they also apply to objections to a debtor's estimate of value. Neither this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992)—which did not address this issue—nor the history of bankruptcy law provides any basis to depart from this plain meaning.

Reilly's second argument is equally untenable. There is no theory under which the Code authorized Reilly to claim an "in kind" exemption in her kitchen equipment, rather than one limited to a particular dollar value. Nor is there any reason to read Reilly's claim of exemption, which by its terms is limited to a $10,718 interest in that property, as claiming such an in kind exemption. While Reilly's brief repeatedly asserts that she unambiguously indicated her intent to exempt the entire value of her equipment, mere repetition of the

point does not make it so. The parties agree that Reilly is entitled to precisely the exemption she claimed: a $10,718 interest in her kitchen equipment. *See* JA 58a. Nothing in the Bankruptcy Code or Rules entitles her to more.

## ARGUMENT

### I. THE BANKRUPTCY CODE AND RULES SET A DEADLINE FOR OBJECTIONS TO A DEBTOR'S CLAIM OF EXEMPTIONS, NOT TO HER ESTIMATE OF MARKET VALUE

As explained in Schwab's opening brief (at 20-26), both § 522(*l*) of the Code and Federal Rule of Bankruptcy Procedure 4003(b) address objections only to a debtor's claims of exemptions. Neither the statute nor the rule addresses objections to a debtor's estimate of the market value of property in which he or she claims an exempt interest. Reilly asserts that the statute and the rule do cover objections to estimates of value, and specifically that together they require that such objections be made in the same 30-day window that applies to objections to claims of exemption. That assertion is without merit.

#### A. The Plain Text Of The Statute And Rule Supports Schwab's Interpretation

Reilly begins with a plain-text argument, contending (Br. 25) that neither § 522(*l*) nor Rule 4003(b) "distinguish[es] between different types of objections." But that is demonstrably wrong: By its terms the rule is limited to objections to exemptions. Indeed, the very title of the rule is "[e]xemptions," and the title of paragraph (b) is "[o]bjecting to a *claim of exemptions*." Fed. R. Bankr. P. 4003(b) (emphasis added). The rule's plain language, moreover, imposes its 30-day deadline only on "an objection to the list of property claimed as

exempt." *Id.* By thus restricting the rule's reach, the plain text does "distinguish" between objections to exemption claims, which the rule covers, and all other objections—including objections to estimates of market value—which it does not cover. Likewise, § 522(*l*) requires debtors to list property "claim[ed] as exempt" and provides that "[u]nless a party in interest objects, the property claimed as exempt" is in fact exempt. Nowhere, by contrast, does Rule 4003 or § 522(*l*) even mention estimates of market value, let alone require that objections to such estimates be made within the short window that the rule establishes. The plain terms of both the statute and the rule thus support Schwab's position, not Reilly's.[1]

Reilly notes, however (Br. 22-23), that under § 522(*l*), when no objection is raised, "the property claimed as exempt on [Schedule C] is exempt." According to Reilly, this language means that absent a timely objection, "the 'property' claimed as exempt is ... exempt in its entirety." Resp. Br. 25; *see also id.* at 28, 39. But that is more word trick than legal argument. Insofar as the "property claimed as exempt" is Reilly's $10,718 exempt interest in her kitchen equipment, the

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[1] Straining to draw some connection between Rule 4003 and estimates of market value, Reilly asserts (Br. 40) that a different portion of the rule, 4003(a), "requires that the debtor supply a valuation of claimed equipment." That is incorrect. Rule 4003(a) requires only that debtors "list the property claimed as exempt ... on the schedule of assets required to be filed by Rule 1007." Thus, a debtor who lists her exemptions on the required schedule has fully complied with Rule 4003(a) even if she fails to include estimates of market value. In any event, Reilly's convoluted, multi-step argument—one that, again, does not even involve Rule 4003(b), but rather 4003(a)—simply underscores the absence in the rule of any reference to estimates of market value.

point is true, but unhelpful to her argument. But insofar as Reilly is contending that the "property claimed as exempt" is the kitchen equipment in its entirety, the argument—for which Reilly offers no supporting authority—is meritless.

Contrary to Reilly's suggestion, the "property" that becomes exempt absent an objection is not the assets in which the debtor has claimed an exemption, but only "the property *claimed as exempt* on [Schedule C]." § 522(*l*) (emphasis added). Hence, as courts have recognized, under the plain text of § 522(*l*) all that becomes exempt when no timely objection is filed is the amount actually claimed on the debtor's schedule—in this case, $10,718 for the kitchen equipment. *See, e.g., In re Soost*, 262 B.R. 68, 72 (B.A.P. 8th Cir. 2001) ("[W]hen a debtor takes an exemption in a particular asset ..., the 'property claimed as exempt' within the meaning of section 522(*l*) is merely an interest in property not to exceed a specified value. Accordingly, where the value of an asset exceeds the amount of the claimed exemption, the asset as a whole does not become exempt. Instead, only a partial interest representing a certain amount of the asset's value is exempted." (citations omitted)).

Reilly's related suggestion (Br. 24-25) that the word "property" must be given a broad meaning is likewise baseless, because § 522 makes the word's meaning clear. Under § 522(*l*), the "property" that becomes exempt in the absence of a timely objection is the "property that the debtor claims as exempt under subsection (b)." That "property," according to subsection (b), "is property that is specified under subsection (d)." § 522(b)(2). And subsection (d), in turn, specifies twelve categories of "property [that] may be exempted," § 522(d)—most of which, as this Court has

recognized, "are explicitly restricted to the 'debtor's aggregate interest' or the 'debtor's interest' up to a maximum amount," *Owen* v. *Owen*, 500 U.S. 305, 310 (1991). Thus, the "property" that becomes exempt absent objection is not assets in their entirety or some other broader conception of "property," but merely (setting aside in kind exemptions) the "interests" enumerated in § 522(d) and claimed by the debtor on her schedule. In other words, while Reilly is correct that the law often regards property as a bundle of sticks, she is wrong in assuming that debtors are entitled to retain the entire bundle when they claim an exempt interest in an asset. The Code makes clear that such an entitlement exists *only* with property that is subject to an in kind exemption, which can be fully exempted irrespective of value. *See* Pet. Br. 2, 8. As to all other property the debtor is entitled to retain only the single stick representing the value up to the monetary limit of the exemption.

In short, the "plain text" of the Code and of Rule 4003 provides no support for Reilly's argument. By their express terms, both the statute and rule address only objections to exemptions. And that should be the end of the matter, because as Reilly herself acknowledges (Br. 21), this Court has made clear that "when the statute's language is plain, the sole function of the courts ... is to enforce it according to its terms," *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (internal quotation marks omitted).[2]

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[2] Contrary to Reilly's assertion (Br. 26), giving effect to the plain terms of the statute and rule would not mean that "there is no sanction for [the] failure to timely interpose an objection."

### B. *Taylor* v. *Freeland & Kronz* Did Not Address The Question Presented Here

Reilly also contends that this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), supports her position. Specifically, Reilly cites the court of appeals' assertion here that the Court in *Taylor* was "'unpersuaded'" by the argument that Rule 4003 does not encompass objections to claims of estimated market value. *See* Resp. Br. 15 (quoting Pet. App. 9a). The court of appeals did make that assertion, but the assertion is incorrect. As explained below (and in Schwab's opening brief), Schwab's argument regarding the scope of Rule 4003 was not even made in *Taylor*, let alone addressed. The Court's decision in that case thus provides no support for Reilly's position.

According to the court of appeals, "[t]he trustee in *Taylor* argued ... that Rule 4003 governs inquiries into the 'validity of an exemption' only and does not 'preclude judicial inquiry' into valuation." Pet. App. 9a (quoting *Taylor*, 503 U.S. at 643). That is simply wrong. The trustee in *Taylor* made *no* argument about whether the rule covers objections to estimates of value—hence the court of appeals' need to end its quotation from *Taylor* just before the word "valuation." The trustee instead argued that objection to an exemp-

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Failure to object promptly to an exemption claim—meaning a description of property, a citation to one or more statutory bases for exemption, and an exemption amount—bars a later objection to any of those three aspects of the claim. Similarly, there is no merit to Reilly's claim (Br. 41) that Schwab seeks to avoid the burden of proof that Rule 4003(c) places on objectors. If an objection is one actually covered by the plain language of the rule, i.e., is an objection to a claim of exemption, the burden is indeed on the objecting party.

tion was not required when the debtor lacked a good-faith basis for the exemption. A fuller excerpt from *Taylor* makes this clear:

> In Taylor's view, § 522(*l*) and Rule 4003(b) serve only to narrow judicial inquiry into the validity of an exemption after 30 days, not to preclude judicial inquiry altogether. In particular, he maintains that courts may invalidate a claimed exemption after expiration of the 30-day period if the debtor did not have a good-faith or reasonably disputable basis for claiming it.

503 U.S. at 643; *see also id.* at 639 (stating in the opening paragraph that "[w]e must decide in this case whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable basis for claiming the exemption"). It was this argument, and not an argument about objections to estimates of market value, that left the Court in *Taylor* "unpersuaded." Pet. App. 9a. But the Court's rejection of that argument has no bearing on Schwab's very different contention, namely that Rule 4003(b) simply does not cover objections to estimates of value.

Reilly is thus wrong in asserting (Br. 36) that the import of *Taylor* was that "the trustee could have challenged [the debtor's] valuation." Reilly's basis for this assertion is the Court's observation in *Taylor* that because the debtor "in fact claimed the full amount [of the asset] as exempt," the trustee "apparently could have made a valid objection under § 522(*l*) and Rule 4003." 503 U.S. at 642, *quoted in* Resp. Br. 36. As this language shows, however, the Court was referring to an objection to the amount of the *exemption*, not to the debtor's estimated value of the asset. More generally,

there is nothing whatsoever in *Taylor* suggesting that the Court's decision had anything to do with the debtor's estimate of the value of the relevant property (proceeds of a pending lawsuit). Indeed, as Schwab noted (Br. 28-29), the Court in *Taylor* never even mentioned the fact that the debtor, in addition to listing the amount of the exemption as "unknown," had assigned a value of "unknown" to the lawsuit proceeds.

To be sure, the Court in *Taylor* observed that "[i]f Taylor did not know the value of ... the lawsuit, he could have sought a hearing on the issue, or he could have asked the Bankruptcy Court for an extension of time to object." 503 U.S. at 644 (citation omitted). But this was a response to the trustee's explanation that he had not objected because he thought the lawsuit proceeds would be minimal or non-existent. It was certainly not an endorsement of the notion that Rule 4003 encompasses objections to valuation. As explained, whether the rule does so is an issue that was not—contrary to the court of appeals' claim here—raised or decided in *Taylor*. *Taylor* thus provides no support for Reilly's argument.

### C. The History Of Bankruptcy Law Reveals No Custom Of Requiring (Or Making) Objections To Estimates Of Value

Reilly also asserts (Br. 42) that "the history of exemptions in bankruptcy" shows that the 30-day deadline in Rule 4003(b) applies to objections both to estimates of market value and to claims of exemption. But nothing in Reilly's prolix historical survey supports that assertion. Reilly relies principally on two general orders of this Court and on Federal Rule of Bankruptcy

Procedure 403, the immediate predecessor to Rule 4003. *See* Resp. Br. 45, 47-48, 50.[3] Reilly cites no authority, however, stating or even hinting that either of the general orders or Rule 403 was ever interpreted to cover objections to estimates of market value, rather than simply objections to exemptions. Nor does she cite anything establishing that creditors or trustees historically objected to valuation as a matter of practice, irrespective of a legal obligation to do so.[4] The absence of evidence on these points eviscerates Reilly's argument that, as a matter of history and tradition, her interpretation of Rule 4003 is warranted.

Moreover, even were there evidence that the general orders or Rule 403 were ever deemed to cover objections to estimates of market value, it would do little to support Reilly's argument, because both the general orders and Rule 403 used language broader than what appears in § 522(*l*) and Rule 4003(b). Indeed, if these

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[3] Reilly's discussion of the actual bankruptcy statutes does nothing to advance her position that objections to valuation are (or have long been) required. Indeed, the discussion establishes little more than the uncontroversial point that exemptions, in some form, have always been part of federal bankruptcy law.

[4] Reilly cites (Br. 54) forms from a treatise addressing possible objections to exemptions. But even putting aside that these forms are too recent to demonstrate anything about historical practice, the forms, contrary to Reilly's assertion, do not concern objections to value. Indeed, nothing in the form objections states that there is a dispute over asset values. Rather, the forms address objections to debtors' attempts to exempt more than permitted under the Code. Hence the relief sought by the objecting party in each form is a ruling that the "debtor is not entitled to all of the exemptions claimed by him." 6 *Collier on Bankruptcy*, II-76.4 (Form No. 2-202) (15th ed. 1996); 13A *Collier on Bankruptcy*, Pt. CS17-22 (Form No. CS17.14-1) (15th rev. ed. 2007).

earlier authorities demonstrate anything pertinent, it is that when their drafters intended to impose an objection requirement that encompassed more than just exemption claims, they used a term broader than "exemption." Hence, both of this Court's general orders required objection not merely to exemption claims but to the trustee's "determination," which included determinations of value. Sup. Ct. Gen. Ord. XIX (1867); Sup. Ct. Gen. Ord. 17(2) (1958). Similarly, Rule 403 required objection to the trustee's "report." *See* Fed. R. Bankr. P. 403 (1975). The contrast between the broader terms in these earlier authorities and the narrower terms—"exempt" and "exemption"—that appear in § 522(*l*) and Rule 4003 only reinforces the conclusion that the narrower terms should be given their plain meaning. *Cf.*, *e.g.*, *United States* v. *Bean*, 537 U.S. 71, 76 n.4 (2002) ("'The use of different terms within related statutes generally implies that different meanings were intended.'" (quoting 2A Singer, *Sutherland on Statutes and Statutory Construction* § 46.06, at 194 (6th ed. 2000))).

### D. An Objection To An Estimate Of Market Value Is Not An Objection To A Claim Of Exemption

Reilly's effort to read the deadline for objecting to a claim of exemption as applying to the debtor's valuation even goes so far as to assert that an objection to valuation *is* an objection to a claim of exemption. *See* Resp. Br. 24 ("The Trustee clearly 'opposes' Reilly's claim of exemption. Specifically, he opposes Reilly's valuation of her equipment[.]"); *accord id.* at 23. That is incorrect.

In order to claim an exemption, a debtor must provide only three pieces of information: a description of

the property, the statutory basis for the claimed exemption, and the amount of the claimed exemption. An objection to any one of those three pieces of information is an objection to a claim of exemption, and thus is covered by Rule 4003.[5] By contrast, a debtor's estimate of the market value of property is not required to claim an exemption—as is clear from the fact that even if a debtor provided no such estimate for certain property, he or she could still claim a valid exemption by describing that property, listing one or more proper statutory bases for exempting some or all of it, and claiming an exemption amount that did not exceed the applicable statutory maximums, if any. The value of property claimed as exempt is simply a separate matter from whether and to what extent the property is being (and can be) claimed as exempt. An objection to the former is thus not an objection to the latter. The United States explained all this clearly in its brief (at 14-17). Reilly notably offers no answer.

Schwab and the United States also explained the related point (*see* Pet. Br. 28-29; U.S. Br. 16-17) that prior to 1991 the form on which debtors claim exemptions did not even require estimates of value. This fur-

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[5] Reilly's amici are therefore wrong in suggesting (Br. 13) that under Schwab's view a trustee need not object promptly to a debtor's miscategorization of property claimed as exempt. Such a miscategorization involves an improper use of one or more statutory exemption bases (*e.g.*, an attempt to apply the tools-of-the-trade exemption (§ 522(d)(6)) to items that are not in fact such tools). Because those statutory bases are part of an exemption claim (unlike an estimated market value), a trustee's failure to object within the time provided by Rule 4003(b) would bar the trustee from later asserting an interest in the property based on the miscategorization.

ther underscores the dichotomy between claims of exemption and claims of market value. And here again, Reilly simply ignores the point.

In sum, the clear language of § 522(*l*) and Rule 4003(b) encompass only objections to exemptions, not objections to estimates of market value. Neither *Taylor* nor the history of bankruptcy supports a contrary reading. Schwab was therefore not required to object under Rule 4003 to Reilly's estimate of the value of her kitchen equipment in order to recoup for Reilly's creditors any equity in the equipment in excess of Reilly's claimed exemption amount.

## II. REILLY DID NOT CLAIM AN EXEMPTION FOR THE FULL VALUE OF HER KITCHEN EQUIPMENT

Echoing the court of appeals, Reilly advances the alternative argument that by listing the same figure for both the amount of the claimed exemption and the estimated value of the property, she "unequivocally indicat[ed]" (Br. 1) her intent to claim the entire property as exempt no matter what its actual value—just as if she had written "100% of value," "the entire property," or a similar phrase for the amount of the exemption. Reilly's argument, in other words, is that Schwab was required to object even if Rule 4003 does not encompass objections to estimates of market value, because his objection is actually to her claim that her kitchen equipment is fully exempt. That argument fails because Reilly made no such claim.

### A. The Plain Meaning Of Reilly's Schedule C Is A Claim To Exempt The Fixed Amount That She Wrote On The Schedule

Although she repeatedly asserts that her schedule should be read as a claim to exempt the full value of her

kitchen equipment, Reilly—like the court of appeals—offers little actual reasoning to support that assertion. That is not surprising: Reilly's argument, after all, is that her claim to exempt $10,718 should be interpreted to mean not precisely what it says but something quite different, namely "100% of value" or "whatever the property is worth." But there is no basis for such adopting such an anomalous reading rather than giving the amounts that Reilly wrote down ($1,850 and $8,868) their ordinary, common-sense meaning. *Cf., e.g., Norfolk S. Rwy. Co.* v. *Kirby*, 543 U.S. 14, 32 (2004) ("'[W]here the words of a law, treaty, or contract, have a plain and obvious meaning, all construction, in hostility with such meaning, is excluded.'" (alteration in original) (quoting *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 89-90 (1823))). This is particularly true given that had Reilly intended to exempt her property in full, she could easily have done so by using one of the above phrases (or one of many others). In any event, regardless of Reilly's *subjective* intent, her decision not to use any of those phrases, but instead to list a specific dollar amount, is best understood, *objectively*, to claim an exemption only in the amount written down. Put simply, although Reilly repeatedly contends that she "claimed the full value [of the property] as exempt" (Br. 3; *accord id.* at i, 8, 9, 14, 18, 36), she in fact claimed an exemption for only $10,718. *See* JA 58a.

The fact that Reilly supplied the same $10.718 amount for the estimated value of the property does not justify a departure from the plain meaning of her claimed exemption amount. As the United States explained (Br. 20), the most natural reading of Reilly's schedule is that Reilly claimed an exemption for the amount written and that that amount was her best estimate of the property's market value. Again, had

Reilly intended something else, she would have filled out her schedule differently. Moreover, reading her schedule as evincing an intent to exempt the kitchen equipment in full ignores the fact that, as Schwab's amici explained (Br. 13 n.15), most bankruptcy petitions are now prepared using software that, as a default, equalizes the exemption amount and the estimated value of the property. The fact that the two values are the same thus says nothing about the debtor's intent to claim an (improper) in kind exemption in the property.

### B. *Taylor* Does Not Support Reilly's Argument

In nonetheless urging the Court to ignore the plain meaning of what she wrote in her schedule, Reilly cites this Court's decision in *Taylor*. There, Reilly notes (Br. 2-4, 36-37), this Court concluded that the debtor, by writing "unknown" for the exemption amount of the proceeds of her lawsuit, had in fact claimed an exemption for the full amount of those proceeds, triggering the trustee's obligation to object. Contrary to Reilly's suggestion, however, *Taylor* does not support her argument. In *Taylor*, the debtor's claim for an "unknown" exemption was facially improper, because under the Code the debtor was not entitled to an in kind exemption for the lawsuit's proceeds. *See* 503 U.S. at 642 ("Davis did not have a right to exempt more than a small portion of the[] proceeds[.]"). By contrast, Reilly's claim to exempt a fixed sum, one that was within the applicable limits under the statutory sections she cited, was entirely proper, as it left no possibility that the claimed amount would turn out to exceed the applicable maximum. There was therefore—in contrast to *Taylor*—no basis for Schwab to conclude that Reilly intended to exempt her property fully, and hence

no basis to object. *See* Pet. Br. 21, 29-30; U.S. Br. 15, 21-23.[6]

Reilly responds with the startling assertion (Br. 37) that her exemption claim was indeed just as improper as the one in *Taylor*, because in both cases the amounts claimed as exempt had the potential to be higher than the applicable statutory limits. To begin with, Reilly's plea that the Court ascribe to her an intent to claim an improper exemption rather than a proper one is inconsistent with the presumption—noted by Schwab (Br. 23) and the United States (Br. 25-26) but ignored by Reilly—that people act in accordance with the law. Moreover, Reilly's assertion renders her argument circular, because it depends on concluding what the argument seeks to prove, namely that Reilly's schedule communicated an intent to exempt the kitchen equipment fully. If instead Reilly's claim to exempt $10,718 is given its plain meaning, then the exemption could not exceed the statutory limits, rendering that exemption proper, unlike the one in *Taylor*. Here again, then, *Taylor* does not support Reilly's position.

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[6] Reilly thus goes astray in asserting (Br. 4) that "the Trustee's explanation for failing to object in this case is far less plausible than the trustee's explanation in *Taylor*." Contrary to Reilly's suggestion, Schwab's explanation for not objecting is not that he doubted Reilly's $10,718 estimate of the property's value. Rather, the explanation is that Reilly's exemption of $10,718 for the property (pursuant to the statutory sections she identified) was proper, and hence objection was not only unnecessary but also unwarranted.

### C. Reilly's "Fresh Start" Argument Provides No Basis To Ignore The Plain Meaning Of Her Exemption Claim, Or To Resolve Any Ambiguity About Her Intent In Her Favor

As explained above, Reilly's claim to exempt $10,718 worth of her kitchen equipment was unambiguously a claim for precisely that amount, no more and no less. But reversal of the court of appeals' judgment would be warranted even if this Court concluded that Reilly's schedule is ambiguous as to her intent, *i.e.*, ambiguous as to whether she intended to claim the amount she actually wrote down or instead intended to claim a different amount (one that does not appear anywhere on the schedule) if it turned out that the property was worth more than she estimated. As Schwab explained (Br. 23-24 & n.9), several circuits and other courts have reasoned that just as ambiguities in contracts are typically construed against the drafting party, any doubt as to what a debtor intended in filling out her schedules should be resolved in favor of the trustee and the creditors. Such an approach encourages debtors to be as clear as possible about their intent when filling out their schedules, thereby facilitating the prompt and efficient conclusion of their bankruptcy cases. Reilly does not even acknowledge this point, let alone offer a direct response to it.

Reilly does contend, however (Br. 17, 21-22, 32-33), that any doubt about her intent should be resolved in *her* favor because to do otherwise would be inconsistent with the "fresh start" policy that underlies bankruptcy law. That argument is meritless. To be sure, giving debtors a fresh start is an important bankruptcy policy. But there are other important policies as well, such as maximizing creditor recovery. And Congress has made clear how those competing policies (and others) are to

be balanced, by spelling out in the Code the exemption amounts that are in its view sufficient to give debtors a fresh start. Under Reilly's approach, those statutory exemption amounts would frequently be exceeded, undermining Congress's determination of how to reconcile the legitimate needs of honest debtors with the legitimate needs of (equally honest) creditors. The Court should decline to adopt an interpretation that produces such a result.

This is particularly true given that Reilly offers no authority stating that limits on exemptions should in fact be narrowly construed. Reilly cites *Kawaauhau* v. *Geiger*, 523 U.S. 57 (1998), for the proposition that "procedures that burden the debtor's exemption entitlement, like those that impair a debtor's discharge generally, are to be construed narrowly." Resp. Br. 33. To begin with, under Schwab's view Reilly and other debtors could receive the maximum exemption amounts permitted by Congress; the only "burdens" imposed by Schwab's position are therefore those that the legislature has prescribed. That aside, *Geiger* was a case about nondischargeability under Section 523 of the Code, and has nothing to do with exemptions (which are set forth in Section 522). Unsurprisingly, nothing in the Court's decision indicates that burdens on exemptions must be construed narrowly. (The cases Reilly cites along with *Geiger* (*see* Br. 22) likewise concerned the need to narrowly construe something other than exemptions.) Moreover, the principle the *Geiger* Court pointed to regarding exceptions to discharge was that such exceptions "'should be confined to those plainly expressed.'" 523 U.S. at 62 (quoting *Gleason* v. *Thaw*, 236 U.S. 558, 562 (1915)). If anything, this principle supports Schwab, because as noted above it is Reilly's position that would routinely allow debtors to exceed

the exemption limits that Congress has "plainly expressed." *Id.*

Reilly further asserts (Br. 34) that because the kitchen equipment has "great sentimental value" for her, she can "achieve her 'fresh start' in the manner Congress intended" only if she keeps the equipment itself, no matter its value. But Reilly offers no basis to conclude that in enacting the Code, Congress placed weight on the sentimental value of debtors' property (save, perhaps, by adopting the "wildcard" exemption, § 522(d)(6), which can be applied to any property—and which Reilly employed to exempt portions of her kitchen equipment). Indeed, the legislative history that Reilly herself quotes (Br. 32-33) shows that Congress's purpose in adopting exemptions was not to allow debtors to exempt items of sentimental value but simply to ensure that debtors retain "the basic necessities of life" and are not "left destitute and a public charge." H.R. Rep. No. 95-595, at 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

In short, Reilly's "fresh start" argument lacks merit. As explained above, therefore, even if the Court deems Reilly's schedule to be ambiguous as to her intent (which it should not), that ambiguity should be resolved in favor of Schwab and the creditors.

## III. Reilly's Various Remaining Arguments For Affirmance Are Without Merit

Reilly offers several other defenses of the court of appeals' judgment. None is meritorious.

### A. Schwab's Interpretation Does Not Undermine Finality

In a variation on her "fresh start" argument, Reilly asserts (Br. 55-59) that Schwab's view is inconsistent

with notions of finality, in that under Schwab's view debtors would retain property with a "cloud" over its title for months or even years (thereby hindering their ability to "start fresh"). This argument is baseless for several reasons.

First, debtors can prevent the formation of any "cloud" over specific property simply by claiming an exemption not for a fixed amount, as Reilly did, but for "the entire property," or "100% of value," or (as in *Taylor*) an "unknown" amount. As discussed above, such phrases unambiguously communicate an intent to exempt property in full, and if a debtor uses such a phrase and no objection is filed within the time prescribed by Rule 4003(b), then the relevant property is indeed fully exempt and the debtor will retain it without any cloud over its title. This alone completely defeats Reilly's (and her amici's) finality argument.[7]

Second, the premise of Reilly's "cloud" argument is that a claim of exemption gives a debtor a legitimate interest in the entire relevant asset. But that premise

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[7] Reilly and her amici attack the United States' suggestion (Br. 27) that debtors who wish to exempt property fully can claim an exemption amount of "unknown," asserting that this would allow debtors "to withhold information" about the value of their property "even though a major point of the schedules is to extract information." Resp. Br. 63; *see also id.* at 64; NACBA Br. 36-37. But that assertion wrongly assumes that what the United States suggested is that debtors could write "unknown" as the estimated value of their property. In fact, as is clear from the language that Reilly quotes (*see* Resp. Br. 63), what the United States argued (Br. 27) is that debtors could list the amount of the *exemption* as "unknown" (or, as the government also suggested (*see id.* at 10-11, 19-20), as "100% of its value"). Reilly and her amici are thus attacking a strawman.

holds true only as to in kind exemptions. As to all other exemptions Reilly's premise is false; debtors are permitted to claim—and hence have a legitimate interest in—only a monetary amount. *See Owen*, 500 U.S. at 310 ("Most of the federally listed exemptions ... are explicitly restricted to the 'debtor's aggregate interest' or the 'debtor's interest' up to a maximum amount."). To be sure, that amount may be large enough that a debtor retains one or more entire pieces of property. But the fact that this *may* occur does not give the debtor any legitimate reason to expect that it will occur, and certainly not any legitimate entitlement to know immediately whether it will occur. What a debtor is entitled to know once the objection deadline of Rule 4003 passes—and what he or she does know under Schwab's view—is how much value he or she will retain from pre-petition property that is not subject to an in kind exemption.

Third, the specter that Reilly and her amici raise of debtors struggling for years with "clouded" property (*e.g.*, Resp. Br. 57; NACBA Br. 2, 4) is inconsistent with the reality of individual bankruptcy cases. As amici themselves point out (Br. 14 & n.11), in 2007, chapter 7 cases were closed an average of 124 days after filing. Given that the initial creditors' meeting (which starts the 30-day objection period) must be called between 20 and 40 days after the filing of the petition, *see* Fed. R. Bankr. P. 2003(a), this means that on average, trustees would have between 54 and 74 more days to challenge valuation claims under Schwab's view than they would under Reilly's view. Debtors' ability to "start fresh" would thus not be hampered for any significant length of time—and again, debtors have complete power to avoid any such hampering simply by claiming "100% of value" for property they wish to exempt fully.

Likewise inconsistent with the reality of bankruptcy cases is the assertion by Reilly and her amici that a trustee might be "content" (NACBA Br. 4) to wait months or even years before asserting that a debtor's estimated value of property was too low and hence that the property should be sold. Contrary to amici's view, trustees do not have an incentive to delay the progress of their cases. Delay pushes back the time when the creditors whom the trustee represents are paid, thereby costing them the time value of money. Although appreciation of assets could theoretically compensate for that loss, most assets only depreciate over time, and even assets that can appreciate do not always do so. Trustees' incentive is thus to move their cases along so that creditors can be paid promptly—and so that the trustees themselves can keep their already overburdened dockets from becoming even more so.

Finally, Schwab notes that it is not his view but Reilly's that is in tension with notions of finality (and the related desirability of moving bankruptcy cases to conclusion quickly). As Schwab explained (Br. 33-34), under Reilly's approach trustees would need to file Rule 4003 objections in many more cases than under Schwab's approach—likely resulting in large numbers of both requests for extensions of time to object and hearings on the objections themselves. Reilly appears to acknowledge (Br. 64-65) that this would be the result of her approach. But the inevitable (and perhaps substantial) delay that the additional objections and hearings would cause in the progress of many bankruptcy cases undermines both finality generally and the

debtor's ability to start fresh in particular. For this reason as well, Reilly's position should be rejected.[8]

### B. Reilly's Approach Is Unworkable In Practice

Reilly next addresses Schwab's explanation (Br. 31-35) of why the court of appeals' approach is wholly impractical and would encourage gamesmanship by debtors. Reilly first responds by noting (Br. 60-61) that there are other remedies available for such gamesmanship. But none of the remedies Reilly cites would likely apply in a situation like this, in which a debtor does not actually know the value of her property and simply "guesses" on the low side in hopes of receiving (in effect) an in kind exemption. Proving bad faith in most such cases would be exceedingly difficult. Moreover, the fact that there are remedies for misconduct does not mean that the Court should adopt an interpretation that encourages such conduct.[9]

Reilly also disputes Schwab's argument (Br. 32-33) that bankruptcy trustees' heavy caseload and minimal remuneration makes it utterly impractical for them to

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[8] Reilly's repeated claim (Br. 11, 29, 67) that if this Court ruled against her she could belatedly amend her schedules so as to exempt more of her kitchen equipment likewise seems inconsistent with notions of finality (and also belies her assertion that such a ruling would cause her a "devastating loss," *id.* at 34).

[9] Reilly's contention (Br. 64 n.10) that Schwab's position would actually create perverse incentives and result in lower recoveries for creditors is baseless. Reilly's argument depends entirely on the assumption that trustees would not object promptly when debtors improperly listed exemption amounts as "unknown." In light of *Taylor*, that assumption is unwarranted. *See* U.S. Br. 19-20 (quoting *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008)).

ascertain the value of large numbers of asserts in the short time window allowed by Rule 4003. Reilly responds by asserting (Br. 65) that "the burden on trustees in administrating a debtor's exemptions entails far less work than it has historically on a per case basis." But Reilly provides no support for that statement. She does note earlier (*id.* at 53) that prior bankruptcy laws required the trustees to report some of the information that debtors are now required to supply. But she offers nothing to suggest that overall, trustees today have "far less work" (*id.* at 65) than in the past—certainly not "on a per case basis" (*id.*). Nor does she address trustees' limited compensation, or respond to the explanation by Schwab's amici (Br. 7-9) of the numerous additional burdens that have been placed on trustees in recent years. Her breezy conclusion that trustees would not be measurably burdened by the court of appeals' rule is therefore wholly unpersuasive.[10]

### C. "Fairness" Considerations Provide No Support For Reilly's Position

Reilly concludes with a case-specific appeal to fairness, asserting (Br. 67-68) that it would simply be ineq-

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[10] Reilly also notes in this portion of her brief (at 61-62) that Rule 4003(b) has recently been amended to create an exception to the 30-day deadline for exemptions that were claimed fraudulently (and other exemptions covered by § 522(q)). These amendments do not, however, support Reilly's reading of the rule as covering objections to estimates of market value. To be sure, the creation of certain exceptions suggests that all other objections *to claims of exemptions* must be made within the 30-day deadline. But that has no bearing on the separate question whether objections that are not to claims of exemptions must also be made so promptly. As explained earlier, under the plain language of the statute and rule they need not be.

uitable to allow Schwab to sell her kitchen equipment. As an initial matter, it should go without saying that none of this can override the plain meaning of the Code and Rule 4003, or of what Reilly chose to write on her schedule. As explained above, analysis of those authorities, and of Reilly's schedule, demonstrates that the judgment of the court of appeals should be reversed.

That aside, Reilly's fairness claim falls short. The basis of Reilly's claim (Br. 68) is her assertion that "there would likely be no benefit to creditors" from allowing Schwab to sell the kitchen equipment. That statement sounds a recurring theme in Reilly's brief (*e.g.*, at 2, 4, 10, 29, 34, 63), namely that Schwab cannot prove or guarantee that if the equipment were sold it would generate value in excess of Reilly's $10,718 exemption claim. But a bankruptcy trustee stands in a fiduciary relationship to the creditors, and would therefore be interested in selling estate property only if (after paying fees and turning over the exempt interest to the debtor) such an action were likely to generate a meaningful recovery for creditors. Reilly's suggestion notwithstanding, trustees have no incentive to spend time and money—both of which are typically in short supply for Chapter 7 trustees—selling assets that will yield little or no benefit for creditors. The fact that Schwab seeks to sell Reilly's kitchen equipment, following receipt of an estimate by an appraiser that the equipment would likely sell for an amount in excess of $17,000, is thus a complete answer to Reilly's argument.[11]

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[11] Reilly belittles the appraiser's estimate as unsubstantiated (Br. 2, 10, 63). But she provides no basis to conclude that "sub-

Furthermore, if a trustee did seek to sell property even though doing so would yield no value to creditors—and neither Reilly nor her amici cite any example of that occurring—a debtor could ask the bankruptcy court to hold a valuation hearing and determine the property's value. If the court determined the value to be at or below the amount the debtor properly claimed as exempt, the estate would have no interest in the property and hence the trustee would not be permitted to sell the asset. *Cf.* 11 U.S.C. § 554(b) ("[A]fter notice and a hearing, the court may order the trustee to abandon any property of the estate that ... is of inconsequential value and benefit to the estate.").[12]

More generally, Reilly's appeal to "fairness" ignores the legitimate claims of the creditors to whom Schwab's duty runs, and who (as a result of Reilly's bankruptcy) will not be paid in full. These creditors could no doubt make their own appeal regarding the "fairness" of allowing Reilly to retain value that, under the scheme devised by Congress, properly belongs to

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stantiation" is required, nor (again) any reason why Schwab would sell the kitchen equipment if it were not going to yield significant equity for the creditors. She does note her own estimate of $10,718, but she offers no valid reason to discount the expert appraiser's valuation in favor of her lay opinion.

[12] Reilly's amici also suggest (Br. 5) that Schwab's approach is unfair because "*pro se* filers will not understand that exempt property isn't really exempt, and that property they thought they could keep or sell, they can't." The possibility that some debtors will misunderstand the nature of the exemption process provides no basis to ignore either the plain language of § 522(*l*) and Rule 4003, or Congress's explicit determination that most pre-petition property cannot be exempted in kind, but only up to specified monetary limits.

them. Put simply, as is typically true in bankruptcy there are legitimate interests on both sides. And in terms of exemptions, Congress has make clear how to reconcile those interests, specifying the maximum amounts that it is "fair" for a debtor to receive. Reilly's demand to receive even more—and thus for her creditors to receive even less—finds no support in principles of fairness.

## CONCLUSION

For the foregoing reasons, and those stated in petitioner's opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

WILLIAM G. SCHWAB
JOSEPH G. MURRAY
WILLIAM G. SCHWAB & ASSOCIATES
P.O. Box 56
811 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(610) 377-5200

JASON ZAC CHRISTMAN
NEWMAN, WILLIAMS, MISHKIN, CORVELYN, WOLFE & FERERI, P.C.
712 Monroe Street
Stroudsburg, PA 18360
(570) 421-9090

SETH P. WAXMAN
CRAIG GOLDBLATT
*Counsel of Record*
DANIELLE SPINELLI
DANIEL S. VOLCHOK
LESLIE S. GARTHWAITE
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 663-6000

OCTOBER 2009

# AMICUS CURIAE BRIEF

Supreme Court, U.S.
FILED
JUL 17 2009
OFFICE OF THE CLERK

No. 08-538

# In the Supreme Court of the United States

WILLIAM G. SCHWAB, PETITIONER

*v.*

NADEJDA REILLY

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE THIRD CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

ELENA KAGAN
*Solicitor General*
*Counsel of Record*
TONY WEST
*Assistant Attorney General*
MALCOLM L. STEWART
*Deputy Solicitor General*
JEFFREY B. WALL
*Assistant to the Solicitor General*
WILLIAM S. KANTER
MELISSA N. PATTERSON
*Attorneys*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

RAMONA D. ELLIOTT
*General Counsel*
P. MATTHEW SUTKO
*Associate General Counsel*
ERIC K. BRADFORD
CATHERINE B. SEVCENKO
*Attorneys*
*Executive Office for United States Trustees*
*Washington, D.C. 20530*

## QUESTION PRESENTED

Whether a Chapter 7 trustee is required by Federal Rule of Bankruptcy Procedure 4003(b) or this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), to object to a debtor's claimed exemption when the debtor is entitled to an exemption in the amount claimed, but the debtor incorrectly lists the market value of the property as equal to the amount of the exemption.

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# In the Supreme Court of the United States

No. 08-538

WILLIAM G. SCHWAB, PETITIONER

*v.*

NADEJDA REILLY

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE THIRD CIRCUIT*

**BRIEF FOR THE UNITED STATES**
**AS AMICUS CURIAE SUPPORTING PETITIONER**

## INTEREST OF THE UNITED STATES

Respondent, a debtor in a Chapter 7 bankruptcy proceeding, filed a form (Schedule C) on which she claimed an exemption, in a specified amount, for property used in her business. On the same Schedule C, respondent also stated her belief that the actual value of the property was equal to the amount of the claimed exemption. Petitioner, the bankruptcy trustee, did not object to the claimed exemption. Petitioner determined, however, that the property was worth substantially more than the amount of the claimed exemption, and he proposed to sell the property and divide the proceeds, giving respondent the amount of the exemption and distributing the rest to creditors. The courts below found that petitioner was barred from selling the property because he had not

objected to the claimed exemption within the 30-day period provided by Federal Rule of Bankruptcy Procedure 4003(b). That holding raises an issue of substantial importance to the Ur ited States.

The Attorney General appoints United States Trustees, who are Justice Department officials, to supervise the administration of bankruptcy cases and to oversee trustees in regions comprising the vast majority of the federal judicial districts. 28 U.S.C. 581-589a. By statute, "[t]he United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title." 11 U.S.C. 307. United States Trustees "serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). The United States Trustee Program thus "acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system." United States Dep't of Justice, *United States Trustee Program Strategic Plan FY 2005-2010*, at 2 (visited July 16, 2009) <http://www.usdoj.gov/ust/eo/ust_org/StrategicPlanFY2005-2010.pdf>. The United States therefore has a substantial interest in the effective implementation of the bankruptcy system and in the avoidance of unwarranted burdens on bankruptcy trustees' performance of their duties.

In addition, the United States is the largest creditor in the Nation. Numerous federal agencies frequently appear as creditors in Chapter 7 cases. Because a bankruptcy estate's assets are typically scarce, the United States has an interest in preventing and deterring Chapter 7 debtors from undervaluing assets in a way that might prevent their use to satisfy claims of the United States.

## STATEMENT

1. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. Individual debtors typically file for relief under Chapter 7 or Chapter 13 of the Bankruptcy Code. The present case arises under Chapter 7, which provides for a liquidation of a debtor's non-exempt pre-petition assets in exchange for a discharge of debts. 11 U.S.C. 701-727. Commencement of a Chapter 7 case creates an "estate" that includes all of the debtor's "legal or equitable interests * * * in property as of the commencement of the case." 11 U.S.C. 541(a). The debtor must surrender all non-exempt estate property to the Chapter 7 trustee, who takes custody of such property, liquidates it, and disburses the proceeds to creditors in accordance with their rights and priorities under the Code. 11 U.S.C. 507, 521(3) and (4), 704(1), 726.[1]

A debtor is entitled, however, to claim various statutory exemptions to prevent the distribution of specified categories of property. 11 U.S.C. 522. Generally speaking, "property exempted [from the estate] is not liable during or after the case for any debt of the debtor that arose * * * before commencement of the case." 11 U.S.C. 522(c). Section 522(d) specifies the types of

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[1] Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Act), Pub. L. No. 109-8, 119 Stat. 23, on April 20, 2005, one day before respondent filed for bankruptcy, see Pet. App. 2a. Although the Act amended Title 11 in certain respects, virtually all of those amendments did not take effect until October 17, 2005, see Act § 1501(a), 119 Stat. 216, and would not affect this case in any event. Unless otherwise noted herein, references to the Bankruptcy Code and Rules are therefore to the versions in effect in April 2005.

property that a debtor may exempt from the estate under the Bankruptcy Code.[2]

Under Section 522(d), there are two basic types of exemptions. A few exemptions allow a debtor to exempt particular types of property regardless of their value. For instance, a debtor may fully exempt unmatured life insurance contracts (other than credit life insurance contracts), 11 U.S.C. 522(d)(7); professionally prescribed health aids, 11 U.S.C. 522(d)(9); some forms of public assistance, veterans' or disability benefits, 11 U.S.C. 522(d)(10)(A)-(C); and awards under a crime victim's reparation law, 11 U.S.C. 522(d)(11)(A).

Most of the Code's exemptions, however, allow a debtor to exempt only an "interest" in a type of property, typically up to a maximum dollar value.[3] For instance, a debtor may exempt an interest in a residence up to $18,450, 11 U.S.C. 522(d)(1); an interest in a motor vehicle up to $2,950, 11 U.S.C. 522(d)(2); an aggregate interest in household goods up to $9,850, 11 U.S.C. 522(d)(3); an aggregate interest in jewelry up to $1,225, 11 U.S.C. 522(d)(4); and an aggregate interest "in any implements, professional books, or tools, of the trade of the debtor" up to $1,850, 11 U.S.C. 522(d)(6). In addition, the so-called wild card exemption allows a debtor to exempt an aggregate interest "in any property" up to

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[2] States are permitted to opt out of the federal bankruptcy exemptions and thereby require debtors to claim exemptions under state and federal nonbankruptcy law. 11 U.S.C. 522(b)(1). Respondent resides and filed for bankruptcy in Pennsylvania, which has not opted out of the federal bankruptcy exemptions. J.A. 26a, 56a.

[3] Some exemptions are limited not to a maximum dollar value, but to the value "reasonably necessary for support of the debtor." 11 U.S.C. 522(d)(10)(D)-(E); see 11 U.S.C. 522(d)(11)(B), (C) and (E).

$975, plus up to $9,250 of any unused amount of the residence exemption. 11 U.S.C. 522(d)(5).[4]

2. Within 15 days after filing the petition, the debtor must file several schedules of assets and liabilities. 11 U.S.C. 521(1); Fed. R. Bankr. P. 1007(c); Fed. R. Bankr. P. Official Form 6, Schedules A-J. One of those schedules, Schedule C, requires the debtor to specify "a list of property that the debtor claims as exempt." 11 U.S.C. 522(*l*); see Fed. R. Bankr. P. 4003(a) (requiring, in tandem with Rule 1007(b)(1), that the debtor "list the property claimed as exempt" on Schedule C). For each claimed exemption, Schedule C contains four columns on which the debtor provides a "description of [the] property," the "law providing [the] exemption," the "value of [the] claimed exemption," and the "current market value of [the] property without deducting [the] exemption." Fed. R. Bankr. P. Official Form 6, Schedule C (capitalization omitted); see J.A. 57a-58a.

"Unless a party in interest objects" to the exemptions set forth by the debtor on Schedule C, "the property claimed as exempt on such list is exempt." 11 U.S.C. 522(*l*). A party in interest

> may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within

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[4] The exemption amounts are adjusted every three years based on the Consumer Price Index. 11 U.S.C. 104(a). The exemption amounts were last adjusted in 2007. See 72 Fed. Reg. 7082 (2007) (11 U.S.C. 104 note). The pre-2007 amounts listed in the text apply to the present case because respondent filed her petition in April 2005. See 11 U.S.C. 104(b)(3); see also 11 U.S.C. 522(d); 69 Fed. Reg. 8482 (2004) (11 U.S.C. 104 note (Supp. IV 2004)).

> 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.

Fed. R. Bankr. P. 4003(b). The bankruptcy court may extend the 30-day period for filing objections upon a showing of cause. *Ibid.* The objecting party bears the burden of proving that the challenged exemption has not been properly claimed. Fed. R. Bankr. P. 4003(c).

3. When a Chapter 7 petition is filed, the United States Trustee designates a private trustee to administer the bankruptcy estate. 11 U.S.C. 323, 701, 704; 28 U.S.C. 586(a)(1). The trustee is a fiduciary of the estate, charged with securing the estate's assets, defending the estate against improper claims or other adverse interests, and liquidating the estate for the benefit of creditors. 11 U.S.C. 704. That process generally begins with a required meeting of the debtor's creditors, held between 20 and 40 days after the petition is filed. 11 U.S.C. 341; Fed. R. Bankr. P. 2003(a). At that meeting, the trustee can verify the debtor's financial affairs, assets, and liabilities by questioning the debtor under oath. 11 U.S.C. 343.

Based on the debtor's schedules, the testimony at the creditors' meeting, and any factual investigation, the trustee may determine that the estate does not have sufficient non-exempt assets to liquidate for the benefit of creditors. 11 U.S.C. 341, 521(1), 704(4), and 704(9); Executive Office for United States Trustees, United States Dep't of Justice, *Handbook for Chapter 7 Trustees*, at 8-1 (July 2002) <http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/7handbook1008/Ch7_Handbook.pdf>. Historically, approximately 95 to 97% of Chapter 7 cases yield no assets for creditors. United States Trustee Program, United States Dep't of Justice, *Preliminary Report on Chapter 7 Asset Cases:*

*1994 to 2000*, at 7 (June 2001) <http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/assetcases/Publicat.pdf>. The trustee currently receives a $60 fee for the administration of a no-asset case. 11 U.S.C. 330(b).

In the remaining Chapter 7 cases, the trustee generally liquidates the estate property through either a private sale or a public auction. The trustee then typically prepares a report for the bankruptcy court that describes the disposition of the estate assets and proposes a plan for distribution of proceeds to creditors. 11 U.S.C. 704(9); Fed. R. Bankr. P. 2015(a)(2) and 5009. Through the trustee's distribution, the debtor receives the amount of her exemptions and creditors receive the remaining proceeds according to their statutory priority. 11 U.S.C. 726. In addition to the trustee's $60 fee, the trustee may move in such cases for additional "reasonable compensation." 11 U.S.C. 326(a).

4. Respondent owned a catering business in Conynham, Pennsylvania. Pet. Br. 14. In April 2005, she filed a petition for Chapter 7 relief. Pet. App. 2a. On her Schedule C, respondent invoked two Bankruptcy Code provisions as bases for exempting specified interests in kitchen equipment that respondent had previously used in her business. J.A. 58a.

First, respondent invoked 11 U.S.C. 522(d)(6), which allowed her to exempt an interest in "tools[] of the trade" of up to $1,850. J.A. 58a. Respondent listed the value of the claimed exemption as $1,850. *Ibid.* Second, respondent invoked 11 U.S.C. 522(d)(5), the wild card exemption, which allowed her to exempt an interest in "any property" of up to $10,225 (because she did not claim a residence exemption). J.A. 58a. Respondent listed the value of the claimed exemption as $8,868.

*Ibid.* In the fourth column of Schedule C, respondent identified the current market value of the business equipment as $10,718, an amount equal to the sum of the two claimed exemptions of $1,850 and $8,868. *Ibid.*

Petitioner was appointed trustee for respondent's estate. Believing that the kitchen equipment might be worth more than $10,718, petitioner obtained an appraisal indicating the equipment was worth approximately $17,000. Pet. Br. 15. On June 22, 2005, petitioner held the creditors' meeting required by 11 U.S.C. 341(a). J.A. 11a. Petitioner did not file within the next month an objection to the "list [of] property claimed as exempt," Fed. R. Bankr. P. 4003(a), including respondent's claimed interests in kitchen equipment, see J.A. 11a-13a.

Seven weeks after the creditors' meeting, on August 10, 2005, petitioner filed with the bankruptcy court a motion to sell the kitchen equipment. J.A. 13a, 141a-143a. By selling the equipment, petitioner could distribute $10,718 of the proceeds to respondent as her exempt interest, while distributing any remaining after-expense proceeds to creditors. See J.A. 142a-143a. Respondent objected to the proposed sale, contending that she had claimed an exemption for the kitchen equipment in its entirety and that petitioner's failure to object to the exemption foreclosed him from consummating the sale. See J.A. 145a-148a.

5. a. After a hearing, the bankruptcy court denied the motion to sell without written opinion. Pet. App. 27a-28a. On appeal, the district court affirmed. *Id.* at 19a-26a. The court stated that, because respondent had identified the same sum ($10,718) as both the amount of the claimed exemption and the value of the kitchen equipment, her clear intent was to exempt the entire

value of the asset. *Id.* at 24a-25a. Relying substantially on this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), the district court concluded that "[a]s [respondent] exempted the entire value, and the trustee never objected, she is entitled to the entire value, even if the trustee asserts it is worth more than she estimated." Pet. App. 25a.

b. The court of appeals affirmed. Pet. App. 1a-18a. Relying on *Taylor*, the court found it "important" that respondent had "valued the business equipment at $10,718 and claimed an exemption in the same amount." *Id.* at 11a. The court stated that "[s]uch an identical listing put [petitioner] on notice that [respondent] intended to exempt the property fully." *Ibid.* The court of appeals concluded that "once Rule 4003's 30-day period elapsed without [petitioner] filing an objection or a request for an extension, the property became fully exempt from the bankruptcy estate regardless of its ultimate market value." *Id.* at 12a.

## SUMMARY OF ARGUMENT

1. a. Under Section 522(*l*) and Rule 4003(b), the Chapter 7 trustee must object to a claimed exemption within a specified period of time or the relevant property will be treated as exempt. To claim an exemption, a debtor must include on Schedule C, as on all its predecessor schedules, a description of the property, the legal basis for the exemption, and the value of the claimed exemption. Most of the statutory exemptions, including those (11 U.S.C. 522(d)(5) and (6)) that respondent invoked for the kitchen equipment at issue in this case, allow the debtor to exempt an "interest" in particular types of property up to a specified dollar amount. Where, as here, a debtor accurately describes an asset

that is exemptible in the claimed amount under applicable law, the debtor has stated a facially valid exemption that is not subject to any objection.

b. At various points in time, Schedule C and its predecessor schedules have required the debtor to supply the trustee with additional information, such as the property's location, use, or market value. In accord with the demands of the current Schedule C, respondent identified a supposed market value for the property in question. That additional information, however, has no bearing on the validity of a debtor's claimed exemption. A claim of exemption informs the trustee that, according to the debtor, she has an interest in property that does not belong to the estate. By contrast, a market valuation informs the trustee whether, according to the debtor, there is an additional interest in the same property that does belong to the estate. If the trustee doubts the accuracy of the debtor's valuation, he may seek to have the property appraised, but such doubt provides no basis for objecting to an otherwise valid exemption. For that reason, a trustee's failure to object to a claimed exemption in the manner or within the time period prescribed by Rule 4003 does not preclude the trustee from selling the asset and distributing to creditors any proceeds in excess of the debtor's exempt interest.

2. a. Contrary to the court of appeals' conclusion, respondent's Schedule C did not suggest an intent to exempt her kitchen equipment in its entirety regardless of the equipment's actual value. Rather, by claiming an exemption in a particular dollar amount, respondent indicated her intent to exempt only a definite, fixed interest in the property. Respondent might have indicated her intent to exempt the kitchen equipment in its entirety by using terms such as "unknown" or "100% of

its value" to describe the value of the claimed exemption, but she used no such terminology.

Respondent's use of a specific dollar figure to describe the claimed exemption distinguishes this case from *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), in which the debtor claimed an indefinite interest by listing the value of her exemption as "unknown." Because the property at issue in *Taylor* (a claim for lost wages in a pending lawsuit) was not one of the assets that a Chapter 7 debtor may exempt in its entirety regardless of its value, that claimed exemption was invalid on its face. Although the Court in *Taylor* held that the trustee had forfeited his objection to that exemption by failing to object within Rule 4003(b)'s 30-day deadline, the Court did not suggest that a trustee who questions the debtor's separate market valuation must object to a facially valid exemption in order to preserve his right to obtain an appraisal, sell the property, and distribute any excess proceeds to creditors. Nothing in *Taylor*, moreover, supports the court of appeals' conclusion that respondent, by using the same dollar figure to identify both the amount of the claimed exemption and the market value of the property, had manifested an intent to exempt the kitchen equipment in its entirety regardless of its actual value.

Petitioner's contrary understanding—that respondent's use of specific dollar amounts in the third column of Schedule C reflected an intent to claim as an exemption the amounts stated—reflects a much more natural reading of the form. That interpretation of respondent's Schedule C also has other advantages: it places the responsibility on debtors, who know best what they intend to claim, to complete their schedules in a way that accurately communicates their intent; and it sensibly re-

solves any ambiguity in a way that renders claimed exemptions valid rather than invalid. Presuming that respondent intended to claim a valid exemption is particularly reasonable here because respondent invoked two statutory subsections (11 U.S.C. 522(d)(5) and (6)) that are limited by their terms to "interest[s]" in property up to specific dollar amounts, and the dollar amounts she listed as the value of the claimed exemption fell within the applicable statutory caps.

b. Contrary to the court of appeals' conclusion, the expiration of the objection period gave respondent no right to assume that she would be allowed to keep her kitchen equipment. To be sure, petitioner's failure to object within that period meant that the property respondent claimed as exempt would be treated as exempt. Properly understood, however, respondent's Schedule C claimed an exemption for an interest in the kitchen equipment in the amount of $10,718. Whether respondent would receive that amount in cash (if petitioner sold the property) or in physical property (if he did not) was left to petitioner to decide during the administration of the estate.

## ARGUMENT

### I. A TRUSTEE IS REQUIRED TO OBJECT ONLY TO THE PROPERTY CLAIMED AS EXEMPT, NOT TO THE DEBTOR'S MARKET VALUATION OF THAT PROPERTY

#### A. A Trustee Is Required To Object To A Debtor's Description Of The Property, Asserted Legal Basis For The Exemption, Or Claimed Value Of The Exemption

1. Section 522(*l*) of the Bankruptcy Code establishes the basic process by which debtors claim exemptions and trustees and other parties in interest object to those exemptions. Section 522(*l*) requires the debtor to file "a

list of property that the debtor claims as exempt." Section 522(*l*) does not specify, however, the precise manner in which debtors must claim their exemptions or trustees must file their objections.

Rule 4003 of the Federal Rules of Bankruptcy Procedure supplies those details. It requires that the debtor "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). Rule 1007, in turn, requires the debtor to file "schedules of assets and liabilities, * * * prepared as prescribed by the appropriate Official Forms." Fed. R. Bankr. P. 1007(b)(1). Official Form 6 contains the schedules of assets and liabilities that a debtor must file, and Schedule C requires the debtor to list "property claimed as exempt." Fed. R. Bankr. P. Official Form 6, Schedule C (capitalization omitted).

Rule 4003 also provides that any party in interest, including a trustee,

> may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.

Fed. R. Bankr. P. 4003(b). The bankruptcy court may extend the time for filing objections upon a showing of cause. *Ibid.* Absent a timely objection, "the property claimed as exempt on such list is exempt." 11 U.S.C. 522(*l*).

2. Under the Code, a debtor may exempt some types of property, regardless of their value. See 11 U.S.C. 522(d)(9) (professionally prescribed health aids); 11 U.S.C. 522(d)(10)(C) (disability benefits); 11 U.S.C.

522(d)(7) (unmatured life insurance contracts); 11 U.S.C. 522(d)(10)(A)-(C) (public assistance, veterans', illness, and unemployment benefits); 11 U.S.C. 522(d)(11)(A) (awards under a crime victim's reparation law). Most of the Code's exemptions, however, including the two exemptions that respondent invoked with respect to the kitchen equipment at issue, are limited to the debtor's "interest" in particular types of property up to a maximum dollar amount. See 11 U.S.C. 522(d)(5) and (6); J.A. 58a. When an asset is worth more than the interest that the debtor has exempted, the excess value belongs to the estate, not the debtor. Under those circumstances, the trustee may liquidate the debtor's exempt interest and the estate's non-exempt interest by selling the asset, and he may then distribute to the debtor and creditors their respective shares of the proceeds.

3. Because the nature of the asset determines whether the debtor can claim it in whole or only in part, "the list of property that the debtor claims as exempt" under Section 522(*l*) must include (a) a description of the asset, (b) the legal authority that provides the exemption, and (c) the value of the claimed exemption. See Fed. R. Bankr. P. Official Form 6, Schedule C. Those are the three pieces of information that a trustee needs in order to determine whether a claimed exemption is valid. So long as the debtor has an interest in property that is potentially exemptible; the debtor identifies the legal basis for her claimed exemption; and the debtor's claimed exemption does not exceed any applicable legal limit, then the debtor has asserted a valid exemption that the trustee has no reason to challenge. Conversely, a challenge to any of those three things—the property description, legal basis for the exemption, or value of the exemption—is an objection to the exemption itself, and

thus must be made within the 30-day time period provided by Rule 4003(b).

4. In the present case, petitioner had no valid basis for objecting to respondent's claimed exemptions for her interests in the kitchen equipment. With respect to that equipment, respondent claimed an exemption of $1,850 under 11 U.S.C. 522(d)(6) (the tools of the trade exemption) and an exemption of $8,868 under 11 U.S.C. 522(d)(5) (the wild card exemption). J.A. 58a. It is undisputed that respondent properly described the kitchen equipment; that the statutory subsections she invoked apply to the property at issue; and that the values of her claimed exemptions did not exceed the maximum values permitted by those subsections. Respondent therefore claimed two valid exemptions for her interests in the kitchen equipment.

Because respondent's exemptions had an adequate basis in law and fact, petitioner did not object to either exemption within the 30-day time period provided by Rule 4003(b). The absence of an objection from petitioner (or any other party in interest) means that "the property claimed as exempt on such list is exempt." 11 U.S.C. 522(*l*). The property claimed as exempt on respondent's Schedule C were two interests in kitchen equipment valued at $1,850 and $8,868. Because petitioner did not object within the 30-day time period provided by Rule 4003(b), respondent is entitled to receive the value of those property interests during the administration of the estate.

### B. Because The Debtor's Estimated Market Valuation Is Not Part Of Her Claim Of Exemption, A Trustee's Disagreement With That Valuation Provides No Basis For Objecting To The Exemption

A claim of exemption informs the trustee that, according to the debtor, she has an interest in property that does not belong to the estate. A market valuation informs the trustee whether, according to the debtor, there is an additional interest in the same property that does belong to the estate. The market valuation provided by the debtor on the fourth column of Schedule C thus facilitates the trustee's administration of the estate by helping him to discern whether particular assets have sufficient non-exempt value to justify liquidation by sale or auction. The presence or absence of additional value belonging to the creditors, however, has no bearing on whether the interest that the debtor claims as exempt is in fact exempt under the applicable statutory provisions.

That understanding of the Code is confirmed by the history of the relevant provisions and schedules. Since the Bankruptcy Act was enacted in 1898, Schedule C and its predecessors (Schedules B-4 and B-5) have required the debtor to provide the information necessary to determine the validity of her claimed exemptions: namely, a description of the property, a specification of the legal basis for the exemption, and a statement of the value of the claimed exemption. Compare *General Orders and Forms in Bankruptcy*, 172 U.S. 653, 677 (1898) (Form 1, Schedule B.(5)), and Fed. R. Bankr. P. Official Form 6, Schedule B-4 (1973), with Fed. R. Bankr. P. Official Form 6, Schedule C (1991). At various points in time, however, Schedule C and its predecessors have required other types of information that do not bear on the validity of the debtor's claimed exemptions.

Prior to 1991, for example, Schedule B-4 required the debtor to state the location of the property and its present use, although it did not require the debtor to estimate the market value of the property. That was true even though then, as now, the debtor was required to file on Schedule B-4 "a list of property that the debtor claims as exempt." 11 U.S.C. 522(*l*) (1988); see Fed. R. Bankr. P. 4003(a) (1990) (requiring, in tandem with Rule 1007(b)(1), that the debtor "list the property claimed as exempt" on Schedule B-4). In 1991, Schedule B-4 was amended and retitled Schedule C. *Inter alia*, those amendments required the debtor to state the property's location on Schedule A (real property) and Schedule B (personal property) instead of Schedule C; eliminated the prior requirement that the debtor state the property's present use; and required the debtor to state the property's market value. See Fed. R. Bankr. P. Official Form 6 advisory committee's note (1991). The recency of the requirement that the debtor identify the market value of property for which exemptions are claimed reinforces the conclusion that such valuations do not bear on the propriety of a debtor's claimed exemptions.

In order to preserve his challenge to a claimed exemption, a trustee or other party in interest must "object[]" within a specified period to the "list of property that the debtor claims as exempt." 11 U.S.C. 522(*l*); see Fed. R. Bankr. P. 4003(b) (establishing 30-day time limit, subject to extension for cause, for "[o]bjecting to a claim of exemptions"). As explained above, the "list of property that the debtor claims as exempt" includes a description of (a) an interest in an asset (b) of a particular value (c) that is exempt from the bankruptcy estate under applicable law. So long as the interest for which the debtor claims an exemption is less than or equal to

the relevant statutory cap, the trustee's belief that the debtor has understated the value of the asset provides no basis for objecting to the claimed exemption. That is because the claimed exemption—the interest that the debtor claims as hers under the applicable law—stands separate and apart from the value of the asset; the two bear no necessary, or even likely, relationship to each other. In deciding whether to object to a claimed exemption, the trustee naturally looks only to the claimed exemption—not to the independent statement of property value. For that reason, neither Section 523(*l*) nor Rule 4003 speaks to the time or manner in which the trustee may seek to determine (for purposes of possible liquidation) whether the debtor's statement of property value is correct.

## II. RESPONDENT'S ARGUMENTS THAT PETITIONER WAS REQUIRED TO OBJECT TO HER MARKET VALUATION OF HER PROPERTY LACK MERIT

### A. Respondent Did Not Indicate An Intention To Exempt The Full Value Of The Asset

#### *1. Respondent's Schedule C is most naturally read as claiming exemptions only for a definite, fixed interest*

On her Schedule C of property claimed as exempt, respondent identified kitchen equipment as one category of property; invoked 11 U.S.C. 522(d)(5) and (6) as the applicable statutory provisions; claimed exemptions of $8,868 and $1,850 respectively under those provisions; and stated the current market value of the equipment as $10,718. J.A. 58. Relying substantially on this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), the court of appeals concluded that, by claiming exemptions totaling $10,718 while valuing the kitchen

equipment in the same amount, respondent had expressed her intent to claim an exemption for the full value of the equipment, whatever that value turned out to be. See Pet. App. 11a, 13a, 17a. Petitioner, by contrast, construed respondent's Schedule C as claiming a definite, fixed exemption of $10,718, while indicating respondent's belief that the kitchen equipment was worth precisely that sum. Pet. Br. 23. Petitioner's interpretation of the form is more natural, and this Court's decision in *Taylor* provides no support for the court of appeals' contrary view.

1. Where, as here, a debtor's Schedule C assigns a particular dollar amount to an exemption, the form is naturally read to claim an exemption limited to the specified amount, not an indefinite exemption in whatever value the property is ultimately determined to have. See, *e.g.*, *In re Barroso-Herrans*, 524 F.3d 341, 346 (1st Cir. 2008) ("[T]he trustee's reading of the exemptions as limited to [the claimed amount] of a $4,000 share of the proceeds from each law suit is objectively reasonable."); *In re Hyman*, 967 F.2d 1316, 1319 (9th Cir. 1992) ("[T]he [debtors] did not sufficiently notify others that they were claiming their entire homestead as exempt property; their schedule only gave notice that they claimed $45,000 as exempt, which is the proper amount of their homestead allowance.").

That is particularly true because respondent could have claimed an indefinite interest by listing the value of her claimed exemption as "unknown," "to be determined," or "100% of its value." Courts and commentators have recognized that such terms "'are red flags to trustees and creditors,' and therefore put them on notice that if they do not object, the whole value of the asset—whatever it might later turn out to be—will be ex-

empt." *Barroso-Herrans*, 524 F.3d at 345 (quoting 1 *Collier on Bankruptcy* ¶ 8.06[1][c][ii], at 8-75 to 8-76 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2007) (*Collier*)). Use of such terms may be unproblematic with respect to property that is exempt in full regardless of its value. But if respondent had used such terms in claiming exemptions under 11 U.S.C. 522(d)(5) and (6), which are limited to a debtor's "interest" in particular categories of property up to specified dollar amounts, petitioner would have been clearly placed on notice of the need to object because the exemptions would have been invalid if the value of the kitchen equipment exceeded the sum of the relevant statutory thresholds.

Respondent used none of those "red flag" terms, but instead claimed exemptions to which she assigned the definite and fixed values of $1,850 and $8,868, for a total of $10,718. Her Schedule C is most naturally read to indicate that she intended to claim an exempt interest limited to that amount *and* that she estimated $10,718 to be the actual market value of the property. Indeed, if a debtor believes that her exemptible interest is equal to the market value of a particular asset, but wishes to make clear that she is claiming only a specific dollar interest within the applicable statutory cap in the event that the property turns out to be worth more, the debtor has no other way to communicate that intent than by using the same dollar amount in the third and fourth columns of Schedule C.

2. This Court's decision in *Taylor* provides no support for the court of appeals' reading of respondent's Schedule C. In *Taylor*, a debtor listed the value of her claimed exemption in a pending lawsuit as "unknown," and the debtor's attorneys informed the trustee that the

suit had a potential value well in excess of any available exemption. See 503 U.S. at 640, 642. After the creditors' meeting (which triggered the 30-day objection period in Rule 4003(b)), the trustee informed the debtor that he considered the lawsuit's proceeds to be property of the estate, but he elected not to file a formal objection based on his belief that the lawsuit lacked sufficient value. *Id.* at 640-641. When the lawsuit settled for a substantial sum and the trustee belatedly demanded that the debtor turn over the proceeds, the debtor's counsel responded that the trustee's failure to file a timely objection meant that the lawsuit was fully exempt. *Id.* at 643-644.

The trustee in *Taylor* did not dispute that, by listing "unknown" as the value of the lawsuit proceeds, the debtor had claimed an exemption for the full value of the lawsuit, whatever that turned out to be. Rather, the trustee argued that, notwithstanding his failure to object to an exemption that was invalid on its face, "courts may invalidate a claimed exemption after expiration of the 30-day period if the debtor did not have a good-faith or reasonably disputable basis for claiming it." 503 U.S. at 643. The Court rejected that argument, explaining that, once Rule 4003(b)'s 30-day deadline expires without an objection, "Section 522(*l*) [makes] the property exempt," and the trustee "cannot contest the exemption * * * whether or not [the debtor] had a colorable statutory basis for claiming it." *Id.* at 643-644. While recognizing that Rule 4003(b)'s 30-day deadline "may lead to unwelcome results," the Court observed that the deadline also "prompt[s] parties to act" and "produce[s] finality." *Id.* at 644.

The decision in *Taylor* sheds no light on the question presented here. In *Taylor*, all agreed that the debtor

had claimed an exemption for the full recovery in her discrimination suit, whatever that amount turned out to be. The parties in *Taylor* also "agree[d] that [the debtor] did not have a right to exempt more than a small portion of these proceeds either under state law or under the federal exemptions specified in § 522(d)." 503 U.S. at 642. The trustee in *Taylor* declined to object within Rule 4003(b)'s 30-day period, not because he reasonably construed the form submitted by the debtor to claim an exemption that was within an applicable statutory cap, but because he judged that the certain costs of objection outweighed the speculative benefits to the estate. *Id.* at 641.

Here, by contrast, respondent used specific dollar figures, totaling $10,718, to identify the value of the claimed exemption. J.A. 58a. Petitioner had no occasion to object to respondent's claimed exemption because he construed that exemption exactly as it was written, as limited to a $10,718 interest in the kitchen equipment—and that amount was within applicable statutory limits. Nothing in *Taylor* supports the court of appeals' view that, by using the same $10,718 figure as the market value of the kitchen equipment, respondent signaled her intent to exempt the full value of the equipment, whatever that value turned out to be. Indeed, *Taylor* cannot support that view, both because (a) the debtor in *Taylor* described the value of her claimed exemption as "unknown" rather than specifying an exact dollar amount, and (b) the Court in *Taylor* was not confronted with any interpretive question analogous to this one, given the parties' agreement in that case that the debtor had sought to exempt the full value of the lawsuit. See *Barroso-Herrans*, 524 F.3d at 344 ("*Taylor* does not tell us *what* has been claimed as exempt—only that

*whatever* has been claimed as exempt is beyond the estate's grasp once the deadline has elapsed.").[5]

***2. Related provisions of the Bankruptcy Code and Rules reinforce the conclusion that respondent's claimed exemption in her kitchen equipment was limited to a specific dollar amount***

As explained above, respondent's Schedule C identified two dollar figures ($1,850 and $8,868), which totaled $10,718, in the column entitled "value of claimed exemption." Respondent's use of those specific figures is most naturally understood as claiming an exemption for a $10,718 interest in the equipment. Related provisions of the Bankruptcy Code and Rules reinforce that conclusion.

1. Under the Rules, a trustee has limited time to review a debtor's schedules and file objections to claims of exemption. The burden should therefore be placed on the debtor, who knows best what she intends to claim as exempt, to complete her schedules in a way that accurately communicates her intent. See *In re Hyman*, 967 F.2d at 1320 n.6. Specifically, Rule 4003(b) requires objections to exemptions within 30 days of the creditors' meeting, which generally must be held 20 to 40 days after a debtor files her petition. Fed. R. Bankr. P. 2003(a). Thus, absent an extension for cause, objections to claimed exemptions must be filed within 50-70 days

[5] Indeed, the debtor in *Taylor* was not called upon to estimate the market value of her lawsuit because the forms used at that time did not require her to do so. The debtor in *Taylor* filed for bankruptcy in 1984, seven years before then-Schedule B-4 was amended to require any estimate of market valuation from the debtor. See 503 U.S. at 640; p. 17, *supra*; Pet. Br. 28. The interpretive question that the court of appeals addressed in this case therefore could not have arisen under the law in effect at the time of the bankruptcy petition in *Taylor*.

after receiving the debtor's Schedule C. In light of that "relatively short" objection period, "it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules." *In re Hyman*, 967 F.2d at 1319-1320 n.6; *In re Barroso-Herrans*, 524 F.3d at 345 ("[A]fter *Taylor*, a failure to object to a claimed objection exemption has very harsh consequences for the estate, and so it is most fair to place on the debtor the burden of claiming exemptions unambiguously.").

While the Rules' time frame for asserting objections allows a trustee to identify claimed exemptions that are invalid on their face, it will often be insufficient to conduct appraisals to determine whether particular assets are worth more than the applicable exemption caps. That practical consideration reinforces the view that the time limits for "object[ing]" to a claimed exemption do not apply to a trustee's reassessment and possible rejection of the debtor's valuation of listed property. To be sure, if petitioner had construed respondent's Schedule C to claim an exemption for the full value of her kitchen equipment, he might have objected (without first performing an appraisal) on the ground that the exemption was *potentially* invalid since the kitchen equipment *might* be worth more than the applicable exemption limits. A rule of construction that encouraged such objections, however, would engender needless litigation in cases where the debtor in fact intended to claim an exemption of a specific dollar amount.

Recognizing the debtor's responsibility to state her claimed exemptions accurately also accords with the larger purposes and structure of the federal bankruptcy system. That system is premised on the notion that an "honest but unfortunate debtor who surrenders for dis-

tribution the property which [s]he owns" deserves "a new opportunity in life and a clear field for future effort." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934). For the system to function effectively, the debtor must honestly and accurately report her assets, liabilities, and exemptions so that the property can be divided between the debtor and her creditors in accordance with applicable Code provisions. See, *e.g.*, *In re An-Tze Cheng*, 308 B.R. 448, 458 (B.A.P. 9th Cir. 2004) ("The efficacy of the bankruptcy system depends in important respects on accurate self-reporting by debtors."), aff'd, 160 Fed. Appx. 644 (9th Cir. 2005) (mem.). When a debtor seeks to claim an exemption for a listed asset in its entirety, rather than for a specific monetary interest in that asset, the debtor can and should so indicate on her Schedule C.

2. To the extent that a particular Schedule C is ambiguous, the trustee should seek to resolve the ambiguity so as to render claimed exemptions valid rather than invalid. Respondent contends, and the court of appeals held, that petitioner should have interpreted her Schedule C to claim the full value of the kitchen equipment, whatever that value turned out to be. But respondent's kitchen equipment was not among the categories of property that may be exempted from the bankruptcy estate regardless of its value. Respondent thus argues in effect that petitioner should have presumed the worst—*i.e.*, that respondent was claiming an exemption potentially in excess of the Code's limits. The more usual and sensible presumption is that debtors are aware of the statutory limits and are attempting to claim exemptions to which they are legally entitled. See *United States* v. *Budd*, 144 U.S. 154, 163 (1892) ("[N]o man is

presumed to do wrong or to violate the law, and every man is presumed to know the law.").

That presumption is particularly sound in the circumstances of this case because respondent correctly identified 11 U.S.C. 522(d)(5) and (6) as the bases for the claimed exemption. J.A. 58a. The exemptions authorized by those provisions are limited to a debtor's "interest" in particular types of property up to specified dollar amounts. The amounts that respondent claimed as exempt under those provisions fell within the statutory caps. Given respondent's express reliance on statutory provisions that are limited by their terms to "interest[s]" having specified maximum values, and given her use of precise dollar figures falling within those statutory maxima, petitioner had no reason to conclude that respondent was claiming a potentially invalid exemption for the full value of the equipment.

3. The court of appeals' approach has the perverse effect of rewarding respondent for her inaccurate assessment of the market value of her kitchen equipment. If respondent had correctly listed that market value as $17,000, she would have had no basis for opposing petitioner's subsequent motion to sell, and she would have received a total exemption of $10,718. But the court of appeals held that by undervaluing her property, respondent had the opportunity to receive a greater exemption—in the amount of the actual value of the property, or $17,000.

As explained above (see p. 16, *supra*), requiring the debtor to identify the market value of the property listed on her Schedule C assists the trustee in determining whether the property has significant additional value, beyond the interest that the debtor claims as exempt under applicable Code provisions, that may feasi-

bly be liquidated and distributed to creditors. The information currently required to be included in the fourth column of Schedule C thus facilitates the administration of the bankruptcy estate, even though it is irrelevant to the trustee's determination whether a claimed exemption is valid. A debtor who believes that an asset has significant non-exemptible value, however, might perceive an incentive to list on her Schedule C a market value at or very close to the claimed exemption, in order to dissuade the trustee from undertaking an appraisal and sale. Acceptance of the interpretive approach adopted by the court of appeals would create an additional incentive to such undervaluations of property.

4. Petitioner's approach entails no unfairness to debtors. If a debtor intends to exempt the full value of an asset, whatever that value may be, she may convey that intent by saying so explicitly or by using "unknown" or similar language to describe the value of the claimed exemption. See pp. 19-20, *supra*. In addition, a debtor may amend her Schedule C "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). If a debtor claims as exempt a specific dollar interest that is beneath the applicable cap, based on the mistaken belief that the dollar figure represents the asset's true market value, nothing prevents her from claiming a larger exemption when she discovers her mistake (when, for example, the trustee moves to sell the property). The Rules therefore provide a straightforward solution for debtors who mistakenly undervalue property and who are entitled to claim larger exemptions: express amendment by debtors of those claimed

exemptions, not implied enlargement of those exemptions by courts.[6]

In the present case, there was little reason for respondent to amend because she was not entitled to claim a larger exemption.[7] Nevertheless, respondent had ample *opportunity* to claim a larger exemption if she believed that one was authorized under the Code. At the creditors' meeting, petitioner informed respondent's attorney that the likely value of the kitchen equipment was approximately $17,000, and that petitioner intended to sell the property in order to generate funds for unsecured creditors. Br. in Opp. 3-4 & n.1. That statement of intent strongly suggested that petitioner understood respondent to be claiming an exemption limited to a $10,718 interest in the equipment. At that point, if respondent had intended to claim an exemption for the kitchen equipment in its entirety, she could have amended her Schedule C to claim the full value of $17,000

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[6] Absent bad faith, a debtor could convert her case from Chapter 7 to Chapter 13, and her property would remain her own rather than being transferred to a bankruptcy estate. 11 U.S.C. 706(a), 1306(b); *Marrama* v. *Citizens Bank*, 549 U.S. 365 (2007). In addition, a Chapter 7 debtor could use her post-petition income to repurchase property given over to the bankruptcy estate.

[7] Indeed, respondent's total claimed exemptions under the Code's wild card provision actually exceeded the applicable statutory cap. Respondent invoked the wild card exemption for an interest of $8,868 in the kitchen equipment, as well as for interests totaling $26 in bank accounts and interests totaling $2,306 in food goods at her restaurant. J.A. 57a-58a. Thus, respondent claimed a total wild card exemption of $11,200, or $975 more than she was permitted at the time. 11 U.S.C. 522(d)(5). When petitioner did not object (apparently because the foodstuffs were perishable items that could not be readily sold), respondent received a windfall of the additional $975.

(to which petitioner presumably would have objected, as in excess of the wild card exemption limit of $10,225).

But respondent did not amend—which makes this case the flipside of *Taylor*. In *Taylor*, the debtor told the trustee that she intended to claim the asset's full value, and the trustee asserted no objection to that facially invalid exemption. Here, the trustee told the debtor that the asset was worth more than her exemption and that the trustee intended to liquidate the property, and the debtor neither amended her Schedule C nor informed the trustee that he had misunderstood the extent of the exemption that she intended to claim. Moreover, because trustees must apply to sell property and provide notice of that application to the debtor, 11 U.S.C. 725; Fed. R. Bankr. P. 2002, 6004, the Court need not be concerned that debtors in future cases will lack notice of any undervaluation.

### B. Petitioner's Proposal To Liquidate The Kitchen Equipment And Divide The Proceeds Between Respondent And Her Creditors Did Not Undermine Any Legitimate Reliance Interest Created By Expiration Of The 30-Day Objection Period

The court of appeals asserted that its approach "accords with bankruptcy's promise of a fresh start," because "[o]nce the period for objection lapses, all parties know what property belongs to the bankruptcy estate and what remains with the debtor." Pet. App. 16a. That assertion is correct as far as it goes. Once Rule 4003(b)'s 30-day period expires, "the property claimed as exempt" on a debtor's Schedule C "is exempt." 11 U.S.C. 522(*l*). But the "property claimed as exempt" on Schedule C is not always or even typically an entire asset or tangible item. See pp. 4, 14, *supra*. The Code

permits only a handful of in-kind exemptions for entire assets. Most of the Code's exemptions instead allow a debtor to exempt an "interest" in property, up to a maximum dollar value. Accordingly, the "property claimed as exempt" on Schedule C is often an interest worth a certain dollar amount, which the debtor will receive in cash if the trustee liquidates the asset by sale or auction.

By specifying precise dollar figures as the value of her claimed exemptions in the kitchen equipment, and by relying on statutory provisions (11 U.S.C. 522(d)(5) and (6)) that are limited by their terms to "interest[s]" in property up to a specified amount, respondent's Schedule C expressed an intent to claim as exempt an interest in kitchen equipment worth a total value of $10,718. Once the period for filing objections expired, respondent knew that she would be allowed to retain that interest, either in cash (if the trustee sold the equipment) or in physical property (if he did not). But the trustee's failure to object gave respondent no basis for assuming that she could retain the physical property rather than the dollar value of the interest claimed to be exempt. That choice is always the trustee's, and it is frequently made after the period to object has expired.

The court of appeals was therefore wrong in stating that, if respondent's "listing were construed to exempt only that portion of the property having the value stated[,] the provisions finalizing exemptions if no objections are filed would be rendered meaningless." Pet. App. 16a-17a n.4 (quoting 9 *Collier* ¶ 4008.02[1], at 4003-5). If respondent's Schedule C had identified $17,000 as the correct market value for the kitchen equipment, and the trustee had failed to object to her claimed $10,718 exemption, respondent would have known that the equipment was subject to liquidation, in

which case she would receive her exempt interest in cash proceeds from the sale. On petitioner's approach, respondent will have precisely that same certainty when she undervalues property. What respondent actually seeks, and what the court of appeals granted her, was a different kind of certainty: the certainty that she could keep an asset's full value, which she had not claimed as exempt and to which she was not statutorily entitled.

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELENA KAGAN
*Solicitor General*
TONY WEST
*Assistant Attorney General*
MALCOLM L. STEWART
*Deputy Solicitor General*
JEFFREY B. WALL
*Assistant to the Solicitor General*
WILLIAM S. KANTER
MELISSA N. PATTERSON
*Attorneys*

RAMONA D. ELLIOTT
*General Counsel*
P. MATTHEW SUTKO
*Associate General Counsel*
ERIC K. BRADFORD
CATHERINE B. SEVCENKO
*Attorneys*
*Executive Office for United States Trustees*

JULY 2009

# AMICUS CURIAE BRIEF

133

No. 08-538 (8)

FILED
JUL 17 2009
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
# Supreme Court of the United States

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**WILLIAM G. SCHWAB, ESQUIRE,**
**Trustee for Nadejda Reilly,**
*Petitioner,*

v.

**NADEJDA REILLY,**
*Respondent.*

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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# BRIEF OF THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

---

Martin P. Sheehan
*Counsel of Record*
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth Street
Wheeling, West Virginia 26003
(304) 232-1064

*Counsel for Amicus Curiae* *Dated: July 17, 2009*

THE LEX GROUP^VA • 1108 East Main Street • Suite 1400 • Richmond, Virginia 23219
(804) 644-4419 • (800) 856-4419 • Fax: (804) 644-3660 • www.thelexgroup.com

08-538 RPLY

## Questions Presented

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003, even though the amount claimed as exempt and the type of property are within the exemption statute?

## List of Parties

The parties below are listed in the caption. William G. Schwab, the petitioner, was appointed as the Chapter 7 trustee in the bankruptcy case of Nadejda Reilly, debtor. The respondent is the debtor, Nadejda Reilly.

The *Amicus Curiae*, is the National Association of Bankruptcy Trustees. NABT is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees in accordance with 28 U.S.C. § 586(a)(1) or equivalent procedures in North Carolina and Alabama. NABT has 828 voting trustee members, and a total membership of 1073.

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## Interest of the *Amicus Curiae*[1]

This *Amicus Curiae* Brief in support of Petitioner is submitted pursuant to Rule 37 of the Rules of this Court, with the written consent of both Petitioner and Respondent, whose consent letters have been filed with the Clerk of Court.

The *Amicus Curiae*, is the National Association of Bankruptcy Trustees. NABT is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586(a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.

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[1] No party has made a financial contribution to the preparation of this brief other than the National Association of Bankruptcy Trustees, and the undersigned who participated in its preparation *pro bono*. Petitioner, William G. Schwab, is a member of the National Association of Bankruptcy Trustees, but he has made no extraordinary contribution, beyond his annual membership contribution and a contribution to the President's Circle.

## Citations to the Record Below

The opinion of the Court of Appeals for the Third Circuit appears at Schwab v. Reilly (In re: Reilly), 534 F.3d 173 (3d Cir. 2008)

## Statement of Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## Statutory and Rule Provisions

**11 U.S.C. § 522(d)**

> (d) The following property may be exempted under subsection (b)(2) of this section:
>
> > (1) The debtor's aggregate interest, not to exceed $20,200 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
>
> . . . .
>
> > (5) The debtor's aggregate interest in any property, not to exceed in value $1,075 plus up to $10,125 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $2,025 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

. . . .

**Federal Rule of Bankruptcy Procedure 1001 Scope of Rules and Forms; Short Title**

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.

**Federal Rule of Bankruptcy Procedure 9009 Forms**

Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

## Statement of the Case

The *amicus curiae* adopt the statement of the case in Petitioner's brief.

## Summary of the Argument

Chapter seven panel trustees and Bankruptcy Court Judges handle a significant caseload. Part of the reason why a high volume of cases can be handled by a limited number of participants is as a result of the adoption of Official Forms. Official Forms standardize the presentation of information and contribute to speedy and inexpensive determinations in accordance with the command of Federal Bankruptcy Rule of Procedure 1001.

Although Federal Rule of Civil Procedure 8(f) represents a philosophical approach to reaching the merits of controversies, and decries the use of technical rules of pleading, that Rule does not govern bankruptcy proceedings generally. Instead, Federal Rule of Bankruptcy Procedure 1001 and Rule 9009 combine to require use of the Official Forms. The efficiency that emanates from the use of Official Forms is eliminated if petitions are liberally construed to implement the subjective intent of debtors.

Consequently, the data entered on Official Forms must be construed objectively. Debtors must be obligated to speak clearly. When petitions are so construed, needless objections and hearings will not be needed. Presumptions that debtors intend to act in a manner not authorized by law will be forsworn.

## Argument

### I. The Need for Efficiency in the Bankruptcy Courts.

In forty-eight states[2] and the federal territories, the United States Trustee has the responsibility for appointing chapter seven panel trustees pursuant to 28 U.S.C. § 586(a)(1). At this time there are eleven chapter seven panel trustees [3] in the Middle District of Pennsylvania where this case originates. According to the most recent statistics, there were 6,409 chapter 7 cases filed in the Middle District of West Virginia for the twelve month period ending March 31, 2009.[4] This is an average annual case load of 583 cases per trustee. These cases, as well as cases filed under other chapters of the Bankruptcy Code are assigned to two bankruptcy judges. See 28 U.S.C. § 152.

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[2] Pursuant to 28 U.S.C. § 581, the United States Trustee program operates in most of the nation. In North Carolina and Alabama the responsibilities of the United States Trustee program remain with the Bankruptcy Court. See Pub. L. No. 99-554 § 302(d)(3) excluding North Carolina and Alabama from those changes made to the Bankruptcy Code in conjunction with the expansion of the United States Trustee program elsewhere in that legislation.

[3] See The official website of the United States Department of Justice at http://www.usdoj.gov/ust/eo/private_trustee/locator/7.htm.

[4] See The official website of the Administrative Office of United States Courts at http://www.uscourts.gov/Press_Releases/2009/bankrupt_f2table_mar2009.pdf.

In the two districts of West Virginia, where the undersigned serves as a trustee, the same sources reflect that there were 2,172 chapter 7 cases filed in the Northern District of West Virginia and 3,007 chapter 7 cases filed in the Southern District of West Virginia over the same time period. There are six chapter seven panel trustees for the State of West Virginia. Their average annual case load is 863 cases per trustee. There is one bankruptcy judge in each district. 28 U.S.C. § 152.

Across the nation, chapter seven panel trustees are busy people. The duties of chapter 7 trustees are generally defined in 11 U.S.C. § 704. But as is often the case, the statute does not tell the whole story. Chapter seven panel trustees have a substantial Handbook[5] issued by the Executive Office for United States Trustees. The Handbook governs, in varying levels of detail, a wide variety of procedures pertaining to chapter 7 cases.

Among the duties described in the Handbook is the conduct of a meeting of creditors. A series of directives require trustees to review with debtors the bankruptcy petition and the related schedules and financial statements filed that have been filed with the Bankruptcy Court. Trustees must verify the identity of individual debtors and the accuracy of the social security number reported as part of the petition. Trustees must insure that the debtor acknowledges the debtor's awareness of the consequences of filing bankruptcy.

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[5] See The official website of the United States Department of Justice at http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/index.htm.

As a result of changes to 11 U.S.C. § 521(f) trustees need obtain and review copies of pay advices and tax returns. 11 U.S.C. § 521(a)(1)(B)(iv) and (e)(2). However, because tax returns contain confidential information, social security numbers, and, often, the names of minor dependents and their social security number, tax returns are handled separately from documents filed in the public records of the Bankruptcy Court. Such documents are filed as restricted documents. At this time chapter seven panel trustees are not among the group of persons given access to documents, such as tax returns, filed as restricted documents. Consequently, the ability to access this information in an automated way is limited. Instead, the regular practice is to obtain copies of these documents directly from the debtor's attorney, or the debtor. This individualized activity takes time.

Trustees are responsible for giving notices to child support claimants in every case. 11 U.S.C. § 704(a)(10) and (c). This takes time.

Trustees can become plan administrators under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002 by operation of law. See 11 U.S.C. § 704(a)(11). This creates duties on trustees to administer non-estate assets for the benefit of persons who are not necessarily parties to the bankruptcy. See Sheehan, M.P., A Simple Solution and a Radical Change: Orphaned Employee Benefit Plans and BAPCPA, NABTalk, Vol. 22, No. 4, pg. 12 (2007). This takes time.

Trustees can become responsible for maintaining medical records of health care providers. 11 U.S.C. § 704(a)(12). This takes time.

Of course these steps must be taken in addition to the central purpose of a meeting of creditors, that is to look for information that might yield assets that can fund a distribution for creditors. These steps can involve inquiry about listed assets, including value and condition. It can include inquiry about assets often overlooked such as tax refunds, inheritances, tort claims, and the like. It can include inquiries into transfers that might yield recoveries as preferences or fraudulent conveyances.[6] Trustees may need to look to benefit creditors, not by effecting a recovery, but by initiating procedures to deny a debtor a discharge. Potential fraud,[7] or merely abuse[8] of the Bankruptcy Code are issues a responsible trustee must evaluate.[9]

More recently exemption inquiries by trustees have become complex. Prior to 2005, virtually all exemptions were governed by the law of the filing

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[6] Causes of action can exist under 11 U.S.C. § 547 and § 548, as well as under state laws that might be used under § 544.

[7] Fraud can lead to denial of discharge under 11 U.S.C. § 727.

[8] Abuse can lead to dismissal of petitions under 11 U.S.C. § 707.

[9] The varied duties of a chapter seven trustee were exhaustively detailed in a law review article by Bankruptcy Judge Steven Rhodes. See Rhodes, S., The Fiduciary and Institutional Obligations of a Chapter 7 Bankruptcy Trustee, 80 Am. Bank. L.J. 147 (Spring 2006).

jurisdiction. Trustees were, and remain, familiar with the law of their own jurisdiction. When the law of the filing jurisdiction is applicable, trustees generally are able to consider its prompt application, easily. But with the adoption of 11 U.S.C. § 522(b)(3)(A), trustees can now be responsible for evaluation of exemption laws from any jurisdiction in the United States.[10] Even the most highly experienced trustee may have to conduct a significant inquiry into the proper application of exemptions with which the trustee has no working familiarity.[11]

All of this work is compensated by a flat fee of $60.00. See 11 U.S.C. § 330(b)(1) and (2)(A). If nothing else, the amount of this fee reveals that efficiency is crucial to the success of the system. However, even that fee sometimes disappears. The Administrative Office of United States Courts has ruled that when the filing fee is waived under 28 U.S.C. § 1930(f) then no fee is paid to a panel trustee. Efficiency is paramount in such circumstances.

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[10] For example, in In re: Chandler, 363 B.R. 723 (Bankr. N.D. W.Va. 2007) a West Virginia Bankruptcy Court needed to interpret Georgia law, while in In re: Regevig, 389 B.R. 736 (Bankr. D. Ariz. 2008) an Arizona Bankruptcy Court declared certain California exemptions unconstitutional.

[11] Several treatises now deal with some of the complexity. See e.g. Brown, W.H., Ahern III, L.R. and MacLean, N.F., Bankruptcy Exemption Manual (Thompson West 2008).

## II. Efficiency is Dependent on Reading Data Entered on Official Form 6 in an Objective Rather than Subjective Manner.

Consequently, trustees believe that debtors have an obligation to enter the data required by the Official Forms prescribed by the Judicial Conference of the United States[12] so that the Official Forms provide meaningful information when read in an objective manner. Unlike proceedings in other forums, the initiation of a bankruptcy case is through the provision of information dictated by a series of Official Forms. Forms have their usefulness in standardization. But standardization only works when objective rules of interpretation are used to evaluate the information on those forms.

A bankruptcy petition is a remarkably different document than a complaint in a civil case. Rule 8 of the Federal Rules of Civil Procedure abolished technical forms of pleading. Instead, pleadings are to be construed to do substantial justice. Fed. R. Civ. P. 8(f). Consequently, complaints are often construed in favor of the pleading party. See e.g. Jenkins v. McKeithen, 395 U.S. 411, 421-22 (1969).[13] However, the Rules of Civil Procedure have

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[12] Bankruptcy Rule 9009 authorizes the Judicial Conference to prescribe Official Forms. Such forms "shall be observed and used." Schedule C - Property Claimed as Exempt" is part of Official Form 6.

[13] A liberal construction of a complaint does not mean that there are no limits at all. In Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and again, in Ashcroft v. Iqbal, 77 U.S.L.W. 4387 (May 18, 2009) this Court has held that Federal Rule of Civil Procedure 8 required some allegation of facts.

as their goal, not only the "just determination" of every action, but also the "speedy and inexpensive" determination of every action. See Fed. R. Civ. P. 1. This idea is part of the special rules applicable to bankruptcy proceedings. Federal Bankruptcy Rule 1001 directs that the Rules and the Official Forms be construed to secure the "just, speedy, and inexpensive determination" of every case and proceeding. While Federal Rule of Civil Procedure 8 has been incorporated into the Bankruptcy Rules, see Federal Rule of Bankruptcy Procedure 7008, that Rule only applies to adversary proceedings within a case in bankruptcy.

While the philosophical approach to a liberal construction of pleadings now seems to be a universal construct, bankruptcy cases are, as often proves to be true, slightly different. Achieving substantial justice is not a principle superior to the requirement that speedy and inexpensive determinations be made. Achieving substantial justice is a goal equal to doing so with dispatch and in a cost effective way.[14]

The Official Forms in use in bankruptcy proceedings implicate efficiency as a component of just, speedy and inexpensive determinations. Standardization, and the efficiency that results, reduces the overall expense to the system and speeds the decision making process. Consequently, customized forms which have been used in lieu of

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[14] [I]t should be noted that Rule 1 places the objectives of "speedy" and "inexpensive" on a plane of equality with "just." Wright, C.A., and Miller, A.R., 4 Federal Practice and Procedure, §1029, pages 157-58 (West 2002 and Supp. 2009).

Official Forms have been stricken solely where the substituted form frustrates efficient review of information. See In re: Mack, 132 B.R. 484 (Bankr. M.D. Fla. 1991)(striking petitions not on official forms); In re: O'Dell, 251 B.R. 602 (Bankr. N.D. Ala. 2000)(striking proof of claim not on official form); and, In re: Orrison, 343 B.R. 906 (Bankr. N.D. Ind. 2006)(striking petition not on official form).

Bankruptcy is a cost effective remedy for persons without the resources to pay their bills. Part of its cost effectiveness has been achieved through standardization. A limited number of trustees and bankruptcy judges handle a significant caseload. Yet the benefits of standardization become meaningless, if the information included on a standardized form cannot be read in an objective way. Reading petitions subjectively, that is according to the intent of the pleader, has a tendency to doom, what is otherwise, an efficient process.

The opinion of the Court of Appeals for the Third Circuit ignored the importance of having an efficient process. Instead it chastised petitioner, a trustee, for not filing an objection to what the trustee perceived to be a validly claimed exemption. The statutes relied upon, 11 U.S.C. § 522(d)(1), (5) and (6), provided for the exemption claimed. The amount claimed as an exemption is within the dollar limits established in those sections.

The sole criticism of the trustee is that he failed to discern that the subjective intent of the debtor was to assert a claim that the entire asset was exempt by causing the value of the property and the amount claimed as exempt to be in the same

amount. The crux of the opinion below provides: "Such an identical listing put Schwab on notice that Reilly intended to exempt the property fully." Schwab v. Reilly, 534 F.3d 173, 178 (3d Cir. 2008)(emphasis added). This idea is reemphasized later in the opinion, "[W]here the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt." Id. at 179 (emphasis added). The suggestion that the trustee should, in all circumstances where an exemption equals listed value,[15] file an objection and have a hearing to explore what the debtor intended would make a mockery of any notion of efficiency.

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[15] Today, most bankruptcy petitions are prepared using software programs. Some of these are "smart" programs. Smart programs do more than provide a template for entering a data. Such programs, (West's "Bestcase" is one such program), limit the need for entering repetitive data.

A smart program can distribute information about assets, both the description of the asset and the accompanying value to several schedules, A or B (the lists of real and personal property), as well as C (exemptions) and D (secured debt) after the information is entered once.

These aids to petition preparation also provide prompts to specific exemption statutes and can calculate the difference between the value of an asset and the value of any lien and suggest that difference be claimed as exempt. Consequently, the default position for most assets, on most petitions, is for the amount of the exemption to equal the listed value of the asset, or the equity in the asset. Objections and hearings would become the norm, and not the exception if the suggestion of the Court of Appeals is required nationally.

An objective reading of the Official Form results in a duty on the debtor to speak clearly when completing Official Form 6. While objectively reading forms does not necessarily compel resolving resulting ambiguities against the drafter, if such a rule emerges it would not necessarily work a hardship. Some courts have imposed such a view without calamitous results. See Hyman v. Plotkin (In re: Hyman), 967 F.2d 1316, 1319 n.6 (9th Cir. 1992); Barraso-Herrans v. Lugo-Mendez (In re: Barraso-Herrans), 524 F.3d 341 (1st Cir. 2008); In re: Cormier, 382 B.R. 377, 397 n.30 (Bankr. W.D. Mich. 2008); In re: Pickering, 195 B.R. 759, 762-63 (Bankr. D. Mont. 1996); In re: Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (9th Cir. B.A.P. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994).

Examination of Allen v. Green, (In re: Green), 31 F.3d 1098 (11th Cir. 1994) and Olson v. Anderson (In re: Anderson), 377 B.R. 865 (6th Cir. BAP 2007) reveals that, like the Schwab Court, the divination of debtor intent is viewed as a mandatory obligation of trustees. Both suggest the need for more objections and more hearings. As demonstrated, that is the wrong decisional matrix when dealing with reading Official Forms.

The other approach, the one advocated by petitioner and the National Association of Bankruptcy Trustees, is that bankruptcy petitions need to be understood objectively. In Hyman v. Plotkin (In re: Hyman), 967 F.2d 1316 (9th Cir. 1992) the opinion reasons; "Based on this information, the Hymans did not sufficiently notify others that they were claiming their entire

homestead as exempt property; their schedule only gave notice that they claimed $45,000 as exempt, which is the proper amount of their homestead allowance under [applicable California law]." The burden to speak clearly in completing Official Form 6 should rest on the debtor. In accord, Barraso-Herrans v. Lugo-Mendez (In re: Barraso-Herrans), 524 F.3d 341 (1st Cir. 2008). The Hyman approach has been widely followed in the bankruptcy courts. See also, In re: Mitchell, 400 B.R. 503 (Bankr. N.D. W.Va. 2009); In re: Einkorn, 330 B.R. 570 (Bankr. E.D. Mich. 2005); In re: Clark, 274 B.R. 127 (Bankr. W.D. Pa. 2002); In re: Jackson, 194 B.R. 867 (Bankr. D. Ariz. 1995); In re: DeSoto, 181 B.R. 704 (Bankr. D.Conn. 1995); Addison v. Reavis, 158 B.R. 53 (Bankr. E.D. Va. 1993), *aff'd*, In re: Grablowsky, 32 F.3d 562 (4th Cir. 1994)(table); In re: Shoemaker, 155 B.R. 552 (Bankr. N.D. Ala. 1992); and, In re: Bronner, 135 B.R. 645 (9th Cir. BAP 1992). But see, Seifert v. Selby, 125 B.R. 174 (E.D. Mich. 1989).

In advocating that Officials Forms need to be read objectively to facilitate an efficient bankruptcy system, the National Association of Bankruptcy Trustees emphasize the speedy and inexpensive components of Federal Bankruptcy Rule 1001. But this emphasis is not inconsistent with the third objective of the rule, doing substantial justice. To the contrary, the debtor in Schwab argues that she expressed an implicit intent to exempt the entire value of her kitchen equipment, even if the equipment had a value in excess of the amount of the exemption available to her by law. How is substantial justice reached when courts presume that debtors have sought to make claims of

exemption that are in excess of the amounts that may be claimed under relevant statutes? Presuming that debtors intend to act in illegally is a bizarre presumption. Normally, the rules of statutory construction favor sensible and lawful outcomes over the absurd and illegal. See United States v. X-Citement Video, Inc., 513 U.S. 64 (1994)(rejecting grammatical reading of statute in favor of a sensible and constitutional construction).

In Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8th Cir. 2002) the Court of Appeals appears to have reviewed the Bankruptcy Court's evaluation of the intent of the debtor in filing an exemption claiming an "unknown" amount exempt. It reasoned that the interest of the trustee to pursue the asset had been consistently asserted, and that the debtor had been aware of, and cooperated in that inquiry, such that it would construe the debtor's use of "unknown" for the value of her claim of exemption in some hard to value contract rights against her. Id. at 414. In doing so, the Court found that when the asset proved to have a value in excess of the remaining value of the debtor's exemptions, the debtor would be entitled to the full amount of the exemption available at law. Presuming a debtor has acted in accordance with the law, and not with an eye toward gaming the system, as the debtors in Schwab, Green, and Anderson have been encouraged to do, is the only proper approach. This is the approach that does substantial justice.

## Conclusion

WHEREFORE, the *amicus curiae* ask this Court to reverse the decision of the United States Court of Appeals, and order that the Trustee's motion to liquidate certain non-exempt kitchen equipment be granted.

Respectfully submitted,

/s/ Martin P. Sheehan
Martin P. Sheehan
*Counsel of Record*
SHEEHAN & NUGENT, P.L.L.C.
41 Fifteenth Street
Wheeling, West Virginia 26003
(304) 232-1064 (Telephone)
(304) 232-1066 (Facsimile)

*Counsel for Amicus Curiae*
*National Association of*
*Bankruptcy Trustees*

# AMICUS CURIAE BRIEF

(10)

No. 08-538

IN THE

# Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,

*Petitioner,*

v.

NADEJDA REILLY,

*Respondent.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

## BRIEF SUPPORTING RESPONDENT OF AMICI CURIAE (I) NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND (II) PROFESSORS KENNETH N. KLEE, ROBERT M. LAWLESS, RICHARD LIEB AND MICHAEL D. SOUSA


*Of Counsel*
Tara Twomey
NATIONAL ASSOC.
OF CONSUMER
BANKRUPTCY
ATTORNEYS
1501 The Alameda
San Jose, CA 95126

John Rao
NATIONAL CONSUMER
LAW CENTER
7 Winthrop Square
Boston, MA 02110

William C. Heuer
*Counsel of Record*
Patricia H. Heer
Kara M. Zaleskas
Christopher M. Winter
Matthew E. Hoffman
Adrian C. Maholchic
DUANE MORRIS LLP
1540 Broadway
New York, NY 10036
(212) 692-1000

*Counsel for Amici Curiae*

## INTEREST OF AMICI CURIAE

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 4,200 consumer bankruptcy attorneys nationwide.[1] Member attorneys and their law firms represent debtors in an estimated 800,000 bankruptcy cases filed each year.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

A number of law professors join this brief as Amici Curiae. These law professors share an interest in the efficient and proper administration of the Bankruptcy Code. The law professors party to this brief are:

Kenneth N. Klee, Professor of Law, UCLA School of Law;

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[1] This brief is filed with the consent of the parties, and letters of consent have been filed with the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, Amici affirm that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other an Amici or Amici's counsel made such a monetary contribution.

Robert M. Lawless, Professor of Law, University of Illinois College of Law;

Richard Lieb, Research Professor, St. John's University School of Law; and

Michael D. Sousa, Professor of Law, University of Denver Sturm College of Law.

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## INTRODUCTION

This case involves an individual debtor's chapter 7 bankruptcy filing under the United States Bankruptcy Code (the "Code"), which is set out in Title 11 of the United States Code, § 101 *et seq.* The Federal Rules of Bankruptcy Procedure (the "Rules") apply.

A chapter 7 case is a liquidation or "straight bankruptcy" case, meaning that the debtor's assets are liquidated and the proceeds are used to pay creditors' claims. It is the classic "give me my piece of the pie" case. In exchange for surrendering property to satisfy claims, debtors are granted a discharge of liability on most prepetition debts. However, not all of an individual debtor's assets are liquidated to pay claims; rather, some assets are "exempt" and do not become property of the debtor's bankruptcy estate. In other words, exempt assets are not "part of the pie" which is liquidated and then distributed. A debtor's claim of exemptions is at the heart of this case.

Permitting individual chapter 7 debtors to claim certain property as exempt serves the "fresh start" policy on which the Code is based. The items which a debtor can claim as exempt are items which are vital to a debtor's ability to get on with her life after being granted a discharge. It is essential to the fresh start policy that, at an early stage in their bankruptcy cases, debtors have a clear picture regarding whether the assets they have claimed as exempt are, in fact, exempt.

Petitioner's view of the exemption process is that there is no deadline for a trustee's challenge to exemption claims. Under this view, debtors will have no certainty regarding how to restructure their affairs. They will not, in fact, obtain a fresh start.

The practical impact of Petitioner's view of the exemption process can be demonstrated through examples involving two basic items which can be claimed as exempt: (i) an automobile and (ii) a debtor's tools of trade.

Under the federal bankruptcy exemptions available to debtors in states that have not prohibited their use a debtor can exempt an automobile with a value of up to $3,225. 11 U.S.C. § 522(d)(2). A debtor whose vehicle is exempt is able to retain and use it. A debtor needs to be able to structure her affairs knowing, after a short time, that she can keep the vehicle. She will make decisions about whether to maintain the car, whether to sell the car, whether to allow others to use the car, whether to keep a job because the car can be used to get there, or whether to look for a new job if the car can be sold and a replacement is too costly.

Under Petitioner's view of the exemption process, each and every one of those decisions will be made in a fog of uncertainty because the trustee would retain the ability to claim, months or even years later, that the car is not in fact totally exempt. How best to proceed would be unclear because the debtor will not know whether she can actually retain the asset. She will not be able to

make decisions about how to maintain the car without worrying about whether the trustee will second-guess those decisions. If she sells the car and chooses to pursue an education with the proceeds, she may later be forced to pay those proceeds back to the trustee but will no longer have the asset to liquidate in order to fund the repayment. If the vehicle is damaged, she will be concerned about whether to use any insurance proceeds to purchase a new vehicle, or whether to let those proceeds sit in a bank account, unused, until she knows whether the trustee will eventually claim the car was worth more than the exemption amount and that he is entitled to some of those proceeds. Any of these situations places a debtor in an untenable position.

Similar problems would arise where exemptions are claimed for a debtor's tools of trade. If a debtor knows that her tools of trade are exempt, she may decide to stay in her current occupation or job. She may decide to go into business for herself, or invest money in an existing business, secure in the knowledge that she has her tools of trade to work with.

If a trustee is able to attack exemptions for an extended period of time, debtors would not be able to make decisions about their tools of trade, and by extension, their livelihood, with any clarity. If replacement tools of trade are expensive, a debtor may hesitate to start her own business or invest in an existing business out of fear that if the trustee later sells the tools claimed as exempt, she would not be able to afford replacements.

Valuation problems will arise in a large number of cases. Value must be determined as of the petition date. 11 U.S.C. § 522(a)(2). If the Court accepts Petitioner's interpretation of the Code, Rules and Official Forms, trustees will often challenge a debtor's valuation after an extended period of time has passed. Valuation can be difficult enough for many debtors without the problems caused by the passage of time. Valuation contests will become more prevalent, and will deplete a chapter 7 debtor's already limited resources. Debtors are likely not to contest a trustee's arguments simply because of the expense and difficulty involved in a retrospective valuation battle. There is no justice or equity in that result.

Delay, in and of itself, is problematic to debtors. A trustee may be content to wait a long time before objecting to exemptions because there is no downside to the trustee. Indeed, valuation challenges could be brought years later, with trustees seeking to take advantage of any increase in market value by claiming that an ultimately-achieved higher value was, in fact, the value as of the petition date.[2] What should a debtor do if she needs to replace property claimed as exempt? Should the debtor sell the asset? If so, must the debtor seek relief from the bankruptcy court

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[2] *See, e.g., Klein v. Chappell (In re Chappell)*, 373 B.R. 73, 75-6 (B.A.P. 9th Cir. 2007) (exemption challenged two years after commencement and value had risen), *appeal pending*, No. 07-35704 (9th Cir).

regarding the manner in which the property can be sold? Can the trustee intervene and demand that a sale be conducted in a different manner?

These problems and issues will without question arise in chapter 7 cases. In *pro se* cases, it is fair to say that the trustee's view of the exemption process would cause problems for bankruptcy courts because *pro se* filers will not understand that exempt property isn't really exempt and that property they thought they could keep or sell, they can't. Debtors who have retained counsel will be faced with escalating legal fees which they will not be able to pay, causing additional problems in the administration of cases and potentially requiring counsel to continue a representation without compensation. Creditors and debtors alike will suffer because the efficiency which is built into the statutory design will be lost. Value will be lost.

The exemption process envisioned by the trustee is not a fresh start and will not foster the better administration of individual chapter 7 cases; rather, it is an option, protection, or even a free pass for trustees. Petitioner's arguments should be rejected.

## SUMMARY OF ARGUMENT

Amici support a construction of the Code, Rules and Official Bankruptcy Forms[3] which fosters the expeditious, efficient and responsible administration of individual chapter 7 bankruptcy cases, and which is at odds with the arguments presented by Petitioner.

First, Petitioner's argument misconstrues the Code and Rules. Section 522(l) requires a debtor to file a "list of property that the debtor claims as exempt" and Rule 4003 limits the time within which objections can be made "to the list of property claimed as exempt[.]" Considered in the context of the information which must be provided in Official Form Schedule C, Petitioner's arguments cannot be reconciled with a practical, common-sense reading of § 522(l) and Rule 4003.

Second, Petitioner's argument that chapter 7 trustees should be permitted an open-ended period of time within which to take property claimed as exempt from individual chapter 7 debtors and then sell it, is inconsistent with the basic structure and purpose of chapter 7.

Chapter 7 is a comprehensive statutory framework which moves cases quickly from

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[3] Official Forms are available online. *See* http://www.uscourts.gov/bkforms/index.html ("Official Forms").

inception to discharge.[4] The statutes require compliance with these timeframes by the debtor or dismissal of the case. As part of that process, the Rules require that all parties in interest object to a debtor's list of property claimed as exempt within a short period of time. This makes sense not only because the Code and Rules mandate that chapter 7 cases move quickly, but also because the retention of exempt property is a vital component of the fresh start policy which is a bedrock principle of bankruptcy law. Exemptions enable a debtor to retain items which have been singled out for special protection. They help put individual debtors back on the road to being productive members of society, and help prevent them from becoming public charges. Petitioner's argument is inconsistent with the comprehensive and fast-moving statutory framework put in place by Congress and the Rules, as well as the importance of exemptions in achieving a fresh start.

Third, Petitioner's argument that the decision below must be reversed in order to prevent abuse of the Code ignores the significant protections which already are in place for that very purpose. There is an extended deadline for objections to fraudulently claimed exemptions. Debtors and their counsel can be sanctioned for misleading disclosures or the filing of inaccurate information. Debtors can be

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[4] Fed. R. Bankr. P. 1001 ("These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.").

denied a discharge for abuse. Cases can be dismissed for abuse; and bankruptcy courts can also refuse to dismiss cases where mischief is afoot and dismissal is inappropriate. Federal criminal statutes can be implicated. Simply put, there is no need to create a new rule untethered to statutory text in order to prevent the abuse of which Petitioner cautions because ample and sufficient protections already exist.

For each of the foregoing reasons, Amici submit that the decision of the Court of Appeals should be affirmed.

## ARGUMENT

### A. A Common-Sense Reading of § 522(l), Rule 4003 and Schedule C Supports the Decision of the Court of Appeals

Amici respectfully submit that a practical, common-sense reading of the Code, Rules, and Official Form Schedule C, supports the decision of the Court of Appeals.

Rule 4003 governs the procedure both for claiming exemptions and for objections to such claims. The Rule has several components. First, subsection (a) works in tandem with Code § 522(l) to enable a debtor to claim certain property as exempt. Second, subsection (b)(1), like § 522(l), provides for objections "to the list of property claimed as exempt." Third, subsection (b)(1)

requires that such objections be filed "within 30 days after the meeting of creditors held under § 341(a) is concluded[.]"[5] An objecting party bears the burden of proving an exemption is not properly claimed, and if an objection is not timely filed, "the property claimed as exempt on such list is exempt." Fed. R. Bankr. P. 4003(c); 11 U.S.C. § 522(l); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643 (1992).

The "list of property claimed as exempt" is governed by an Official Form entitled "Schedule C – Property Claimed As Exempt."[6] This form requires a debtor to make four specific entries for each asset claimed as exempt: (i) describe the property claimed as exempt, (ii) specify the law which serves as the basis for the exemption, (iii) state the value of the claimed exemption and (iv) state the "current value of property without deducting [the] exemption."[7]

Amici submit that Schedule C is most logically read and understood as placing property claimed as

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[5] If Schedule C is amended, the time for objections runs anew. Fed. R. Bankr. P. 4003(b)(1).

[6] *See* http://www.uscourts.gov/rules/BK_Forms_1207/B_006C_1207f.pdf. Official Forms are prescribed by the Judicial Conference pursuant to Rule 9009. Fed. R. Bankr. P. 9009.

[7] *See* http://www.uscourts.gov/rules/BK_Forms_1207/B_006C_1207f. The United States (the "Government") noted three of Schedule C's four requirements, omitting reference to the "current value of property without deducting [the] exemption" requirement. U.S. Brief, p. 14.

exempt into two distinct categories: (i) property in which after the exemption is applied, there is *no* equity value left for the estate and (ii) property in which equity value *is* left after application of the exemption. This case involves the former, in that the value of the property in which Respondent claimed an exemption was listed by Respondent as being equal to the permissible exemption amount.

In cases where the value of property claimed as exempt is equal to or less than the amount of the statutory exemption, a common-sense reading of Schedule C is that the debtor claims the entire asset as exempt. 9 COLLIER ON BANKRUPTCY ¶ 4003.02[1] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2009) ("the specificity required is that sufficient to serve the purpose of the listing, which is to permit a determination of whether the property's character and value render it exempt."). That is exactly what happened here.[8]

Petitioner argues he had no reason to object to Respondent's Schedule C because (i) the exemption amount was proper, and (ii) the amount of property claimed as exempt was not greater than the permissible exemption amount. But Petitioner's argument is built on the flawed premise that Schedule C requires a debtor to state what *portion* of an asset's total (and unstated) value is being

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[8] This case does not involve the situation where the trustee is on notice that equity exists after application of the exemption. The Court need not address that scenario in this case.

claimed as exempt, rather than requiring a debtor to state the total value of the asset. In Petitioner's view, the fact that the asset's actual value may have been higher than the scheduled amount is of no consequence because Respondent was only required to state the value of the exemption, not the value of the asset. Petitioner's argument ignores what the Official Form requires: a statement of the asset's current *total value* without deducting the exemption amount, not "the portion of the exempt asset claimed as exempt." Petitioner's argument reads "current value of property" out of the Official Form.

Moreover, if Petitioner's reading of the Official Form is correct, there would be no deadline for effectively challenging exemptions. A leading treatise on bankruptcy law identifies this problem:

> . . . if the listing were construed to claim as exempt only that portion of the property having the value stated – the provisions finalizing exemptions if no objections are filed would be rendered meaningless. The trustee or creditors could always claim that the debtor's interest in the property was greater than the value claimed as exempt and effectively still object to the debtor exempting his or her entire interest in the property after the deadline for objections had passed.

9 COLLIER ON BANKRUPTCY, *supra*, ¶4003-02[1].

Petitioner's reading of the Official Form would also render the Form useless. The basic purpose of Schedule C is to put the trustee and creditors on notice of exemption claims and the value of assets against which they are being applied. Using the information contained in the Official Form, the trustee can determine whether to: (i) challenge the exemption and liquidate the property, (ii) allow the exemption if the property's value is equal to or less than the permissible exemption, or (iii) abandon the property if there is only a marginal amount of equity. *See* TRUSTEE HANDBOOK,[9] at pp. 8-2 – 8-4 (discussing exemptions and abandonment). If the maximum value that can be listed is the permissible exemption amount, Schedule C will *never* give notice of potential equity in the asset. It will not provide information from which to determine whether to challenge an exemption and have the property liquidated. It will render the Official Form useless.

It is also reasonable to assume that Petitioner's reading of the Official Form is incorrect because if the Judicial Conference intended what Petitioner argues, there were straightforward, simple ways of phrasing the Official Form to accomplish that result. Language of limitation could easily have been used. Language to the effect of "value, up to

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[9] The United States Trustee (the "U.S. Trustee") has published a "Handbook for Chapter 7 Trustees" (hereinafter, "TRUSTEE HANDBOOK") *available at* http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/7handbook1008/Ch7_Handbook.pdf.

the amount of the permissible exemption" or "value of the portion of the property's total value which is claimed as exempt" could have been used. But the Judicial Conference did not do so; rather, it required a debtor to identify the "current value of the property without deducting [the] exemption." The only qualifications placed on the value stated is that it be current and *without* regard to the exemption amount. Rule 4003 then provides for objections "to the list of property claimed as exempt," and does not except from this Rule objections to a debtor's valuation. And there is no reason to do so because there is nothing unique to valuation objections.

Finally, Petitioner's argument that no objection is necessary to items "properly" claimed as exempt both states the obvious and creates an exception that swallows the rule. If accepted, trustees could easily argue around other requirements of the Rule and Official Form. Trustees could argue that the debtor had only exempted items "properly" categorized as tools of the trade, and could later contend that items which were not "properly" categorized could be taken and sold, even though they were explicitly noted by the debtor on Schedule C. The trustee's argument eliminates the need for virtually any objection to be filed within the timeframe contained in Rule 4003.

For each of the foregoing reasons, Petitioner's argument should be rejected based on a common-sense interpretation of § 522(l), Rule 4003 and Official Form C.

## B. The Expedited Nature of Chapter 7 Cases and Importance of Exemptions Support the Decision of the Court of Appeals

### *i. Statistics And Statutory Timeframes*

Individual debtor chapter 7 cases which closed in 2007 had an average life span, from filing to disposition, of just 124 days and a median life span of just 112 days. *See* BAPCPA Report,[10] at p. 12. That is no accident. Individual debtor chapter 7 liquidation cases, by statutory design, move quickly.[11] The Congressional imperative embodied in the statutory design which moves these cases along quickly makes sense; chapter 7 cases are by far the most frequently utilized type of bankruptcy case commenced by individual debtors. *See* Henry J. Sommer, CONSUMER BANKRUPTCY LAW AND PRACTICE, ch. 3.1 (John Rao ed., Nat'l Consumer Law Center, 8th ed. 2006) (hereinafter, "CONSUMER BANKRUPTCY LAW").

A voluntary chapter 7 case is commenced by filing a petition in the bankruptcy court. 11 U.S.C.

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[10] A 2007 report required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA Report"), *available at* http://www.uscourts.gov/bnkrpctystats/2007/bapcpatxt.pdf.

[11] Indeed, the "Discharge in Bankruptcy" discussion on the Federal Judiciary's "Bankruptcy Basics" webpage states: "Typically, [a chapter 7 discharge is granted] about four months after the date the debtor files the petition . . . ." http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/discharge.html#when.

§ 301; Fed. R. Bankr. P. 1002(a); CONSUMER BANKRUPTCY LAW, ch. 3.2.2. The form of the petition which must be filed (and documents which must accompany it) is prescribed by an Official Bankruptcy Form. Commencement of a voluntary chapter 7 case constitutes entry of an "order for relief" under the Code. 11 U.S.C. § 301. Entry of an "order for relief" is an important point of departure in a chapter 7 case because it is the point from which time limits begin to run for a number of significant events in the case. In chapter 7 cases, an interim trustee is immediately appointed to marshal and liquidate assets and administer the bankruptcy case. 11 U.S.C. § 701.

Numerous deadlines in the Rules keep a chapter 7 case moving expeditiously, binding both debtors and trustees. Serious consequences can result when debtors miss a deadline, and that should be no less true for the trustee who, unlike the debtor, is a professional involved in hundreds of cases.

When an individual debtor commences a chapter 7 case, the debtor must file a number of documents with the petition or within 15 days thereafter. *See* Fed. R. Bankr. P. 1007(a)(1), (c). These documents include, among others: (i) a list of creditors; (ii) schedules of assets and liabilities; (iii) a schedule of executory contracts and unexpired leases; (iv) a statement of financial affairs; and (v) documents evidencing all wages earned by a debtor within sixty days prior to the commencement of the bankruptcy case. *See*, 11 U.S.C. § 521; Fed. R. Bankr. P. 1007. Included in this group of schedules is Schedule C, which identifies and values the

property a debtor claims as exempt. *See* Fed. R. Bankr. P. 4003(a); 1007; 9 COLLIER ON BANKRUPTCY, *supra,* ¶ 4003-02[1]. The chapter 7 trustee is obligated to make certain that all required schedules and statements are filed. TRUSTEE HANDBOOK, pp. 6-2, 6-8.

The deadline for filing any necessary "statement of intention" is 30 days from entry of an order for relief. 11 U.S.C. § 521(a)(2)(A). Within 30 days of qualifying as trustee, a chapter 7 trustee is required to file a complete inventory of the debtor's property (unless it has already been filed). Fed. R. Bankr. P. 2015(a)(1); TRUSTEE HANDBOOK, p. 6-4.

Individual chapter 7 debtors must pay close attention to the statutory deadlines for disclosures, or run the risk of dismissal if the requirements of Code § 521(a)(1) are not met within 45 days of the petition date. *See* 11 U.S.C. §§ 521(i); 707(a)(3).

A chapter 7 trustee must determine whether to "assume or reject" his unexpired leases for residential real property or of any personal property, or any contract, within 60 days of entry of the order for relief. 11 U.S.C. § 365(d). When a lease or contract is assumed, all monetary defaults must be cured. Bankruptcy courts can extend the 60 day deadline, but if no action is taken and the 60 day period expires, leases and contracts are deemed rejected.[12] 11 U.S.C. § 365(d).

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[12] For nonresidential real property where a debtor is lessee, she has 120 days to assume or reject. 11 U.S.C. § 365(d)(4).

Perhaps the most important event in an individual chapter 7 case, at least from the debtor's perspective, is the meeting of creditors which is conducted pursuant to Code § 341. 11 U.S.C. § 341. Although § 341 only requires that the meeting be held "[w]ithin a reasonable time after the order for relief," Rule 2003 requires that the "United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief." Fed. R. Bankr. P. 2003(a); *see* CONSUMER BANKRUPTCY LAW, ch. 3.3. Accordingly, soon after an individual debtor chapter 7 case is commenced, the bankruptcy court will mail a notice to all creditors providing the date and time of the § 341 meeting. *See* CONSUMER BANKRUPTCY LAW, ch. 3.3.[13] In the overwhelming majority of individual chapter 7 cases, the § 341 meeting of creditors is "[t]he debtor's first, and often only, appearance at any kind of hearing" in the bankruptcy case. CONSUMER BANKRUPTCY LAW, ch. 3.4.

At least 7 days before the § 341 meeting, a chapter 7 debtor must provide the trustee copies of tax returns or transcripts of those returns for the previous year. *See* 11 U.S.C. § 521(e)(2)(A). Failure to do so can result in dismissal of the case. 11 U.S.C. § 521(e)(2)(B). At the meeting, the debtor must produce: (i) identification, (ii) evidence of a social security number (or lack thereof), (iii) evidence of current income, (iv) statements of

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[13] The notice also sets deadlines for filing claims, objecting to discharge of particular debts, or objecting to discharge generally. CONSUMER BANKRUPTCY LAW, ch. 3.3.

account, and (v) documentation of the debtor's monthly expenses. 11 U.S.C. §§ 521(h), 707(b)(2); Fed. R. Bankr. P. 4002(b).

The U.S. Trustee presides over the § 341 meeting, but generally speaking, the debtor is questioned by the interim chapter 7 trustee. Fed. R. Bankr. P. 2003(b)(1), 2002(a)(1); CONSUMER BANKRUPTCY LAW, ch. 3.4; TRUSTEE HANDBOOK, p. 7-1. The purpose of a § 341 meeting is to give creditors and the interim trustee a chance to learn about the debtor's financial affairs, but in individual cases these meetings generally require between just three and thirty minutes. CONSUMER BANKRUPTCY LAW, ch. 3.4. A debtor's testimony at a § 341 meeting is under oath. TRUSTEE HANDBOOK, p. 7-3. At this meeting, a trustee must have a debtor verify the accuracy of information contained in her schedules. *Id.* at p. 7-3. The U.S. Trustee has provided chapter 7 trustees a list of sample questions (some of which *must* be asked) to help identify assets and potential fraud or abuse. *Id.* at p. 7-5, App. A1-A4. Chapter 7 trustees are encouraged to use written questionnaires to supplement information obtained by oral examination. *Id.*[14]

In advance of a § 341 meeting, chapter 7 trustees should determine whether there are assets to be administered in the case, and whether there

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[14] *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007), for an example of a trustee's investigation uncovering questionable disclosures and the subsequent pursuit of assets.

are assets which require investigation. TRUSTEE HANDBOOK, pp. 6-3, 6-5. A trustee should verify at or before the § 341 meeting the accuracy of the debtor's inventory of assets contained in Schedules A and B, as required by Rule 2015(a)(1). Fed. R. Bankr. P 2015(a)(1); TRUSTEE HANDBOOK, p. 6-4. The U.S. Trustee has created a specific form to be used by chapter 7 trustees for the purpose of identifying assets. TRUSTEE HANDBOOK, pp. 6-4, Forms – 3-7 and "Sample Case" pp. 1-7. Chapter 7 trustees are advised to seek additional information before a § 341 meeting, even if only to corroborate information which a debtor has already provided. *Id.* at p. 7-1.

Importantly, § 341 meetings may be continued or adjourned as necessary at the trustee's discretion. Fed. R. Bankr. P. 2003(e). All that a trustee must do to continue a § 341 meeting is announce an adjourned date and time at the meeting. *Id.* When a meeting is adjourned, the time period for objecting to exemptions does not begin to run because the meeting has not been concluded.

Much like entry of an order for relief is the starting point from which many time periods requiring compliance by a debtor are measured in a chapter 7 case, the date of the first § 341 meeting starts the clock ticking on a number of deadlines for actions by the trustee, U.S. Trustee and creditors. Within just 10 days of the *first* § 341 meeting (*i.e.*, regardless of whether the meeting is continued on subsequent dates) the U.S. Trustee must "file with the court a statement as to whether the debtor's

case would be presumed to be an abuse under section 707 (b)." 11 U.S.C. § 704(b)(1)(A). An individual debtor case is presumed to be an abuse of chapter 7 if any one of a number of calculations meet statutory thresholds. 11 U.S.C. § 707(b)(2). This is the "means test." Making this assessment requires analysis of a debtor's schedules and other filings. *See* 11 U.S.C. § 707(b)(2). Within just five days of when the U.S. Trustee files this statement, it must be distributed to all creditors by the bankruptcy court. 11 U.S.C. § 704(b)(1)(B). If a presumption of abuse exists, the U.S. Trustee must, within just thirty days of filing its statement, seek either to have the case dismissed or converted to another chapter. 11 U.S.C. § 704(b)(2).

The period of time within which creditors can file claims against a chapter 7 debtor also uses the first date set for a § 341 meeting as the start of the stopwatch. "[A] proof of claim is timely filed if it is filed not later than 90 days after the first date set for the [§ 341] meeting of creditors[.]" Fed. R. Bankr. P. 3002.[15] Complaints to determine the dischargeability of particular debts under § 523(c), or complaints objecting to the debtor's discharge under § 727(a) (*i.e.*, an objection to *any* discharge being granted) must be filed within 60 days of the

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[15] Rule 3002 notes exceptions, not relevant herein. However, in "no asset" cases, the clerk of court notifies creditors that claims need not be filed. Fed. R. Bankr. P. 2002(e). If assets are located to fund distributions, a subsequent notice is sent, and claims can be filed. Fed. R. Bankr. P. 3002(c)(5).

*first* scheduled § 341 meeting. Fed. R. Bankr. P. 4007(b), (c); 4004(a).

Finally, and as is most relevant here, the period of time within which a chapter 7 trustee or party in interest can object to a debtor's claim of exemptions begins to run from the date of the § 341 meeting. However, as compared with the timeframes above which begin to run as of the *first* date set for the § 341 meeting, Rule 4003 provides that "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is *concluded* or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b)(1) (emphasis supplied); 9 COLLIER ON BANKRUPTCY, *supra*, ¶ 4003.03[1][a]. This makes sense because the very purpose of a § 341 meeting is to permit the trustee and creditors to obtain information, and the timeframe for objections should not begin to run until the debtor has provided the necessary information and the § 341 meeting has concluded. Because the trustee may adjourn the § 341 meeting to a specific date in the future, the trustee has complete control over when this time begins to run, and can therefore take whatever time is necessary to further investigate the value of a debtor's property. A trustee can, moreover, request an extension of the 30 day period if the request is made within the original 30 day period, as contemplated by Rule

4003(b)(1).[16] It is the scope and interpretation of Rule 4003 which is now before the Court.

*ii. Discussion*

Viewed through the lens of the timeframes imposed by the Rules, it is evident why individual chapter 7 cases are, on average, completed in approximately 120 days.

Within 15 days of when a chapter 7 case is commenced, a debtor must meet her basic disclosure obligations by filing a number of documents with the bankruptcy court. From early on in a case, a substantial amount of information is available for the chapter 7 trustee to analyze and question. Additional disclosures are required at or before the § 341 meeting. If an individual chapter 7 debtor fails to provide the required disclosures within 45 days of filing her petition, her case may be subject to dismissal.[17]

By no later than 40 days after an individual debtor commences her chapter 7 case, the § 341 meeting is held. Within just 10 days of the *first date set* for the § 341 meeting, the U.S. Trustee must state whether the case is presumed to be an "abuse" of the Code. This requires analysis of a debtor's schedules and disclosures.

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[16] Here, the trustee neither adjourned the § 341 meeting nor requested an extension. Indeed, this appeal stems from what might be viewed as the trustee's negligence.

[17] Upon motion, the 45 day period can be extended. 11 U.S.C. § 521(i).

At this point, there is a basic shift in focus in the case as a result of additional timeframes which the Rules put in place. The timeframes change from being deadlines by which the debtor must act, to being deadlines by which the trustee (or creditors) must act.

Within 30 days of *conclusion* of the § 341 meeting, the trustee or a creditor must object to a debtor's claimed exemptions. That the time for filing objections to exemptions runs from the *conclusion* of the § 341 meeting is important because it gives the chapter 7 trustee a high degree of control over the objection process in two ways. First, Rule 2003(e) gives the trustee virtually unfettered discretion to adjourn the meeting. All that a trustee must do to adjourn the meeting is announce (at the meeting) a specific date and time for the continued meeting. If the trustee has concerns regarding exemptions, he can simply adjourn the § 341 meeting and request additional information, keeping the clock from ticking on the deadline for filing objections. Second, if the § 341 meeting is concluded and the trustee still requires more than 30 days to investigate or challenge objections, the trustee can simply request additional time. The Rule expressly provides for such an extension.

Within 60 days of the first § 341 meeting, the trustee must file a "No Distribution Report" if there

are no assets available to fund distributions.[18] In this same 60 day period, the time for objections (i) to the dischargeability of any particular debt, or (ii) to a debtor's entitlement to any discharge, expires. As a result, within approximately 100 days from the petition date (a maximum of 40 days for the § 341 meeting and then 60 days to object), all proceedings objecting to discharge and dischargeability will have been commenced or will be barred.

When the time period for objecting to discharge (and/or for a motion to dismiss the case) has expired (and assuming no objection to discharge has been filed), Rule 4004(a)(1) requires that a bankruptcy court "shall forthwith grant the discharge[.]" Fed. R. Bankr. P. 4004(a)(1).

When viewed in this manner, it makes sense that most individual chapter 7 cases are concluded within just 120 days.

Petitioner's construction of § 522 and Rule 4003 is inconsistent with the statutory design. Congress and the Rules promulgated by this Court have put in place a framework in which individual chapter 7 cases are almost always concluded within 120 days. Within that timeframe, individual debtors can have some clarity about their finances on a going-forward basis. They have made substantial disclosures, know that there are no objections to

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[18] *See* Amended Memorandum of Understanding, April 1, 1999, available at http://www.usdoj.gov/ust/eo/rules_regulations/mar99/mou99.pdf.

discharge, have been questioned by the trustee and know that the U.S. Trustee has determined there is no presumed abuse of the Code. They are on notice of any objections to exemptions. The deadlines for everything which must be known to the debtor and the Court before granting a discharge to implement the fresh start policy of the Code, have passed. The BAPCPA Report confirms that the system works on this timeframe.

Yet, Petitioner's argument suggests – with respect to property which Congress has singled out as being entitled to special treatment – that a debtor's finances, future prospects and ability to rely upon and use property claimed as exempt must remain up in the air for an unspecified period of time while the trustee decides whether to take action. Petitioner suggests that when a chapter 7 case has progressed to the point where a bankruptcy court can determine whether to grant a chapter 7 *discharge*, individual debtors *need not even have been put on notice* about whether their car, home, furnishings, clothes, tools of trade and other items will later be taken by the trustee. How can debtors reasonably be expected to restructure their affairs in such circumstances? Petitioner's reading of the Code and Rules simply is inconsistent with the basic structure and statutory

framework within which chapter 7 individual debtor cases are processed.[19]

Petitioner's argument is also inconsistent with the concept of a fresh start. Petitioner contends that if the value of property noted in Schedule C is within the range of permissible exemptions, there is no need for the trustee to file *any* objection. The trustee can then – at whatever time the trustee chooses – demand that the debtor surrender the property claimed as exempt so that the trustee can try to sell it for a higher amount. Petitioner's rule would apply regardless of whether the value noted is above or below the permissible exemption amount. It would apply to a debtor's home, car, furnishings, clothing, etc. Petitioner's construction of the Code and Rules places *no limitation at all* upon when these demands could be made.

It simply cannot be correct that the Code and Rules, by design, put in place a statutory framework that pushes individual chapter 7 cases to conclusion in just 120 days and which requires that objections to Schedule C be filed within just 30 days of the last § 341 meeting, but at the same time place *absolutely no limitation* upon the time within which a trustee can challenge the debtor's valuation of the exempt property by selling it and, by extension, challenge the exemption itself. This

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[19] When discharge is granted, a chapter 7 case is not necessarily closed. The case will remain open while actions objecting to dischargeability are litigated.

is especially so in light of the statute's requirement that valuation be measured as of the petition date, and is underscored by the fact that, in the experience of NACBA's members, challenges to valuation are the most common type of objection to exemptions. Under Petitioner's construction of the statute, the fresh start policy is jeopardized.

### C. Remedies Untethered to the Statutory Text are Unnecessary

Petitioner contends that an open-ended construction of Rule 4003 is necessary to prevent abuse of the bankruptcy process by debtors. Petitioner's argument ignores the extensive statutory framework which is already in place and which accomplishes this very goal.

In 2008, Rule 4003(b) was amended to create an exception to the 30 day objection period for property claimed as exempt. This exception applies where fraudulently claimed exemptions are at issue. The Rule provides: "The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption." Fed. R. Bankr. P. 4003(b)(2); *see* 9 COLLIER ON BANKRUPTCY, *supra*, ¶ 4003.03[1][b].

The Advisory Committee Note to this amendment reveals that the revised Rule is designed to address the very situation with which the trustee is concerned:

> Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the

> court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate.

Vol. A (Appendix) COLLIER ON BANKRUPTCY, *supra*, App. Pt. 2-249. To the limited extent exemption fraud exists, it usually involves valuation issues.[20] If Petitioner's construction of the Code and Rules is correct, there would have been no need for this amendment because before the statute was amended, there would have been *no time limitation* for challenging a debtor's valuation.

In addition to the exemption-specific fraud prevention devices in the Rules, individual chapter 7 debtors and their counsel are subject to oversight by bankruptcy courts, the U.S. Trustee, chapter 7 trustee and, as a practical matter, by creditors.

In March 2008, the Office of the Inspector General, United States Department of Justice, published a report entitled: "The United States Trustee Program's Oversight of Chapter 7 Panel Trustees and Debtors."[21] The Oversight Report discusses the U.S. Trustee's oversight of chapter 7 cases. It details the manner in which the U.S.

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[20] Somewhat more common is failure to schedule property, addressed by § 554(c), (d), which preserve unscheduled property as nonexempt estate property, even after case closure. *See* 5 COLLIER ON BANKRUPTCY, *supra*, ¶ 554.03.

[21] "Oversight Report," available at http://www.usdoj.gov./oig/reports/OBD/a0819/final.pdf.

Trustee conducts means testing, and concludes that the U.S. Trustee has "adequate controls in place to ensure that means testing was conducted on all Chapter 7 and Chapter 13 bankruptcy filings, as required by BAPCPA." Oversight Report, p. 24-29. The Oversight Report also discusses the U.S. Trustee's audit program, which is designed "to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide in cases filed under Chapters 7 or 13[.]" *See* Oversight Report, pp. 29-32. The Oversight Report concluded that the U.S. Trustee's audits were being performed "in accordance with the criteria established by the BAPCPA." Oversight Report, p. 30.

In addition to oversight by the U.S. Trustee, the Code contains a number of provisions which discourage abuse of chapter 7 by debtors, their counsel, and professionals who prepare bankruptcy petitions. These statutes help ensure that adequate and accurate information is provided in all disclosures and filings made in individual debtor chapter 7 cases.

Section 110 of the Code imposes specific penalties upon "bankruptcy petition preparers" for the negligent or fraudulent preparation of bankruptcy filings. 11 U.S.C. § 110.

Section 523 details certain debts which are not discharged in bankruptcy, including, in some circumstances, debts which are not properly scheduled. 11 U.S.C. § 523(a)(3). Similarly, debts that existed at the time of a prior bankruptcy case

in which a discharge was denied are excepted from discharge. 11 U.S.C. § 523(a)(10).

Section 707(b)(1) provides for the dismissal or conversion of a chapter 7 case if "substantial abuse" is found. 11 U.S.C. § 707(b)(1). *See* TRUSTEE HANDBOOK, pp. 6-11 – 6-13.

Code § 707(b)(4) provides bankruptcy courts the authority to require a debtor's attorney to reimburse the trustee all reasonable costs, including attorneys fees, if conversion or dismissal is granted and "the attorney for the debtor . . . violated [Rule] 9011" in commencing the case. 11 U.S.C. § 707(b)(4). Subsection (4)(B) of this statute provides that bankruptcy courts, on their own initiative, may order civil penalties against a debtor's attorney for violation of Rule 9011, and may also order the payment of a penalty to the trustee or U.S. Trustee. 11 U.S.C. § 707(b)(4)(B). Subsection (4)(D) provides that an attorney's signature on a petition is "a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with [the] petition is incorrect." 11 U.S.C. § 707(b)(4)(D). This certification is expressly noted on the Official Form petition itself.

Code § 727, entitled "Discharge," contains a number of significant provisions designed to deter fraud and abuse. It provides that a debtor cannot obtain a discharge if the debtor transfers, removes, destroys or conceals property of the estate (or permits any of these things to be done) with the intent to hinder, delay or defraud creditors or the debtor's bankruptcy estate. 11 U.S.C. § 727(a)(2).

A debtor who has concealed, destroyed, mutilated or falsified records from which the debtor's financial condition or transactions can be ascertained, can be denied a discharge. 11 U.S.C. § 727(a)(3).

A debtor who knowingly and fraudulently makes a false oath or account, presents a false claim, makes agreements to act or forbear, or withholds from the estate recorded information regarding the debtor's assets and financial affairs, can be denied a discharge. 11 U.S.C. § 727 (a)(4).

A debtor who fails to adequately explain a loss of assets, can be denied a discharge. 11 U.S.C. § 727(a)(5).

If a debtor refuses to obey an order of the court, or refuses to testify on grounds of the privilege against self-incrimination even after immunity from prosecution has been granted, she can be denied a discharge. 11 U.S.C. § 727(a)(6).

After a discharge has been granted, it can later be revoked if it was obtained through fraud or if the debtor knowingly and fraudulently fails to report the postdischarge acquisition of property which would be considered property of the estate. 11 U.S.C. § 727(d).

Code § 105(a) also applies. This statute grants broad authority to bankruptcy judges to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a); *see also Marrama*, 549 U.S. at 374-75 (2007) (discussing § 105(a)).

All documents filed in connection with a bankruptcy case are subject to the signature requirements of Rule 9011. Fed. R. Bankr. P. 9011. This includes all petitions, pleadings, written motions or "other papers" filed in a bankruptcy case, as well as all schedules and statements, and any amendments thereto. Rule 9011's signature requirements provide that each signed document carries with it a representation to the court that, after reasonable inquiry, the assertions in the document (i) are not being presented for an improper purpose, (ii) are warranted by existing law (or by a nonfrivolous argument for the extension of existing law), and (iii) have evidentiary support. *Id.* at (b).

If Rule 9011's signature requirements are violated, the bankruptcy court can award sanctions. *Id.* at (c).

The importance of the signature requirements in bankruptcy cases is underscored by explicit warnings included in the Official Bankruptcy Forms. The Official Form Voluntary Petition, Schedules and Statements caution, in the signature blocks for an individual debtor, that the debtor must sign under penalty of perjury. This warning works alongside Rule 1008, which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." Fed. R. Bankr. P. 1008.

Title 18 of the United States Code is implicated by improper conduct in a bankruptcy case. *See* 18 U.S.C. §§ 152-158, 1519. These statutes provide

criminal penalties for concealing assets and making false oaths and claims. They establish penalties for bribery and embezzlement. They provide for incarceration. They make it a federal crime to commit bankruptcy fraud, or to act with knowing disregard of bankruptcy laws or rules in a bankruptcy case, as well as provide criminal penalties for the destruction or alteration of records in a bankruptcy case. *See* 18 U.S.C. §§ 152-158, 1519.

Finally, in addition to these numerous statutory remedies, bankruptcy courts are vested with the inherent power to address abusive litigation tactics and frauds perpetrated upon the court. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)).

When viewed through the lens of the numerous devices which can be employed to prevent fraud and abuse of the bankruptcy system, it is submitted that Petitioner's contention that a new remedy must be created – untethered to the text of any statute or rule – should be rejected.

## D. A Brief Response to Arguments Made by the United States

### *i. Historical Analysis*

The Government argues that because Schedule C's requirement that a debtor identify the current value of property claimed as exempt was just recently (*i.e.*, in 1991) added, this information is not relevant to whether a claim of exemption is

objectionable. *See* U.S. Brief, p. 17. This argument should be rejected for each of three reasons.

First, the issue before the Court concerns the time within which a trustee can challenge a claim of exemptions, not what information is required by Schedule C. The requirements of Schedule C are beyond dispute. They are set out in plain text on the Form.

Second, the argument does not lead to the conclusion urged by the Government. Although the "current value" requirement was added to Schedule C in 1991, prior to then, debtors were required to state the value of this property on other schedules. The "value" requirement of Schedule C is nothing new, it was just moved to Schedule C from elsewhere.[22] If anything, this demonstrates that the information now in Schedule C is of increased importance to exemption claims, not less.

Third, in an historical analysis, the relevant inquiry concerns how the timeframe for objections has been treated in the past. In this regard, the basic procedures have remained constant: one party generates a list of exemptions, and another party has a limited time period within which it can object to that list. *See* Sup. Ct. Gen. Ord. 17(2) (1958); Fed. R. Bankr. P. 403 (1975); Fed. R. Bankr. P 4003. Consistent with prior practice, Rule 4003 requires that objections to exemptions be filed within a short timeframe.

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[22] Petitioner noted this at page 29, footnote 11 of its brief.

The Government's arguments should be rejected.

*ii. In re Hyman*

The Government's reliance upon *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (1992), is misplaced. *See* U.S. Brief, pp. 19, 23, 24.

In *In re Hyman*, the value of property claimed as exempt was indisputably more than the $45,000 exemption amount. Under state exemption law the property (a home) could only be sold to satisfy claims if there was more than $45,000 in equity after liens were satisfied. *In re Hyman*, 967 F.2d at 1318-19. The debtors valued the property at $415,000, and liens against the property totaled $347,611. *Id.* at 1318. There was nonexempt equity in the property, and the debtors' schedules made this plain. Everyone was on notice of this. It was always clear that this nonexempt property, and any increase in its value, could be liquidated for the benefit of creditors.

Here, Respondent's Schedule C put all parties in interest on notice that there was *no equity* in the property claimed as exempt after application of the exemption. For this reason alone, the reasoning of *In re Hyman* is inapplicable here.

Moreover, the reasoning of *In re Hyman* is flawed. The court focused on the "relatively short" 30 day limitation in Rule 4003(b), and suggested that debtors are in control of the exemption process. *Id.* at 1319 n. 6. That is incorrect.

Although debtors typically file their own schedules, the *trustee* has complete control over the time period for objecting to exemptions. All that a trustee need do in order to prevent the 30 day period from beginning to run is adjourn the § 341 meeting according to the requirements of the Rule. Even then, trustees can seek an extension of the 30 day period. The statute expressly provides for this. Critically, neither *In re Hyman*, nor the brief *amici curiae* of the Government, recognizes the trustee's degree of control. *Id.*; U.S. Brief, pp. 23-4. They each rest upon a flawed contention.

Finally, the Government contends that a trustee's work in a chapter 7 case "generally begins" at the § 341 meeting. U.S. Brief, p. 6. This, too, is incorrect (or *should* be incorrect). *See* pp. 18-20, *supra*. The Trustee Handbook itself details a number of steps which trustees should take before a § 341 meeting. The suggestion that a trustee's work should begin at the § 341 meeting is incorrect.

*iii. "Unknown"*

Finally, the Government suggests that Respondent should have put "unknown" in the value column of Schedule C. This position should be rejected.

First, it ignores the fact that Schedule C affirmatively requires that debtors state the value of property claimed as exempt. If a debtor knows or has a reasonable basis for estimating this value, she is obligated, by the form, to state it. The mere fact that reasonable people might disagree regarding an item's exact value does not mean the

debtor should not state her position on what that value is.

Second, specifying "unknown" where a value is, in fact, known, would violate any one of a number of the signature requirements discussed above. It simply cannot be correct that the best way to claim an exemption is to violate those requirements.

Third, if debtors begin to use "unknown" as a matter of course in order to claim an asset as exempt, it will lead to unnecessary litigation and delay. Trustees will adjourn § 341 meetings as a matter of course. Motions to extend the time for objecting to exemptions will become standard practice. Valuation issues will become ever-present. This will increase costs. All of these things will delay the closing and resolution of cases. The use of "unknown" where a value is, in fact, known, simply is not an answer.

Finally, it cannot be forgotten that many chapter 7 debtors commence cases on a *pro se* basis. To suggest that the best way to claim an asset as exempt is to do something other than what Schedule C requires, is unfair to *pro se* litigants on many levels.

## CONCLUSION

For the foregoing reasons, Amici Curiae respectfully requests that the Court affirm the decision of the Court of Appeals.

Respectfully submitted,

*Of Counsel*
Tara Twomey
NATIONAL ASSOC. OF CONSUMER BANKRUPTCY ATTORNEYS
1501 The Alameda
San Jose, CA 95126

John Rao
NATIONAL CONSUMER LAW CENTER
7 Winthrop Square
Boston, MA 02110

William C. Heuer
*Counsel of Record*
Patricia H. Heer
Kara M. Zaleskas
Christopher M. Winter
Matthew E. Hoffman
Adrian C. Maholchic
DUANE MORRIS LLP
1540 Broadway
New York, NY 10036
(212) 692-1000

*Counsel for Amici Curiae*

Dated: September 25, 2009